LEGISLATIVE HISTORY

Public Law 657--79th Congress

Chapter 864--2d Session

S. 1477

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DIGEST OF PUBLIC LAW 657

WAR-CONTRACT CLAIMS. Authorizes departments and agencies, in accordance with Presidential regulations, to consider, adjust, and settle equitable claims of contractors, subcontractors, etc., for losses incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part.

INDEX AND SUMMARY OF HISTORY ON S. 1477

October 11, 1945	S. 1477 was introduced by Senator Lucas and was referred to the Senate Committee on the Judiciary. Print of the bill as introduced.
April 12, 1946	Hearings: Senate, S. 1477.
July 9, 1946	Senate Committee reported S. 1477 with amendments. Senate Report 1669. Print of the bill as reported.
July 16, 1946	Debated in Senate and passed as reported.
July 17, 1946	S. 1477 was referred to the House Committee on the Judiciary. Print of the bill as referred.
July 19, 1946	House Committee reported S. 1477 with amendments. House Report 2576. Print of the bill as reported.
July 25, 1946	S. 1477 was debated in the House and passed as reported.
	The Senate concurred in the House amendments.
August 7, 1946	Approved. Public Law 657.

79TH CONGRESS
1ST SESSION

S. 1477

IN THE SENATE OF THE UNITED STATES

OCTOBER 11 (legislative day, OCTOBER 2), 1945

Mr. LUCAS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government (which prior to August 14, 1945, was authorized to enter into contracts and into amendments or modifications of contracts under section 201 of the First War Powers Act, 1941), in accordance with regulations prescribed by the President, to enter into contracts and into amendments or modifications of contracts, without regard to the provisions of law relating to the making, per-

formance, amendment, or modification of contracts, whenever the head of such department or agency makes a determination that such action is necessary to prevent a manifest injustice to a firm, corporation, or individual who has furnished supplies or services for the Government: *Provided*, That action taken pursuant to this section shall be confined to cases where such supplies or services have been so furnished between December 7, 1941, and August 14, 1945; and action may be taken under this section in such cases whether or not such supplies or services were furnished under a contract which has been completed and upon which final payment has been made: *Provided further*, That this section shall not be applicable to cases submitted under section 201 of the First War Powers Act, 1941, which have been finally disposed of under such section upon their merits prior to August 14, 1945. All Acts under the authority of this section shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be incompatible with the public interest.

SEC. 2. No action shall be taken under this Act except with respect to claims or requests for action thereunder submitted to the department or agency of the Government concerned prior to July 1, 1946.

79TH CONGRESS
1ST SESSION

S. 1477

A BILL

To authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

By Mr. LUCAS

OCTOBER 11 (legislative day, OCTOBER 2), 1945
Read twice and referred to the Committee on the Judiciary

WAR CONTRACT HARDSHIP CLAIMS

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

SEVENTY-NINTH CONGRESS

SECOND SESSION

ON

S. 1477

A BILL TO AUTHORIZE RELIEF IN CERTAIN CASES WHERE SUPPLIES OR SERVICES HAVE BEEN FURNISHED FOR THE GOVERNMENT DURING THE WAR

APRIL 12 AND 13, 1946

Printed for the use of the Committee on the Judiciary

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WAR CONTRACT HARDSHIP CLAIMS

FRIDAY, APRIL 12, 1946

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 2 p. m., pursuant to call, the Honorable Pat McCarran (chairman) presiding.

Present: Senators McCarran and Revercomb.

Also present: Representative Thomas J. Lane, of Massachusetts, and J. G. Sourwine, the Counsel of the Senate Committee on the Judiciary.

The CHAIRMAN. The committee will come to order.

We have before us S. 1477, a bill to authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

The bill will be inserted in the record at this point.

(The bill is as follows:)

[S. 1477, 79th Cong., 1st sess.]

A BILL To authorize relief in certain cases where supplies or services have been furnished for the Government during the war

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government (which prior to August 14, 1945, was authorized to enter into contracts and into amendments or modifications of contracts under section 201 of the First War Powers Act, 1941), in accordance with regulations prescribed by the President, to enter into contracts and into amendments or modifications of contracts, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever the head of such department or agency makes a determination that such action is necessary to prevent a manifest injustice to a firm, corporation, or individual who has furnished supplies or services for the Government: *Provided*, That action taken pursuant to this section shall be confined to cases where such supplies or services have been so furnished between December 7, 1941, and August 14, 1945; and action may be taken under this section in such cases whether or not such supplies or services were furnished under a contract which has been completed and upon which final payment has been made: *Provided further*, That this section shall not be applicable to cases submitted under section 201 of the First War Powers Act, 1941, which have been finally disposed of under such section upon their merits prior to August 14, 1945. All Acts under the authority of this section shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be incompatible with the public interest.

SEC. 2. No action shall be taken under this Act except with respect to claims or requests for action thereunder submitted to the department or agency of the Government concerned prior to July 1, 1946.

The CHAIRMAN. We have a report here of date March 5, 1946, from the Department of Justice, concluding with the expression [reading]:

In view of the foregoing considerations, I find no objection to the approval of the bill.

The letter will be inserted in the record at this point.
(The letter is as follows:)

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., March 5, 1946.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This is in response to your request for my views relative to a bill (S. 1477) to authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

Under section 201 of the First War Powers Act of 1941 (50 U. S. C. App. 611), a number of agencies of the Government were authorized by Executive Order 9001 issued December 27, 1941, to modify, amend, or settle claims under contracts, to make advance, progress, or other payments upon such contracts, and to enter into agreements with contractors modifying or releasing accrued obligations, whenever in the judgment of the Government agency involved such action would facilitate the prosecution of the war.

The bill under consideration would empower the President to authorize any department or agency of the Government which, prior to August 14, 1945, was authorized to enter into contracts under section 201 of the First War Powers Act of 1941 (50 U. S. C. App. 611), to enter into contracts and amendments or modifications of contracts whenever the head of such department or agency determined that such action was necessary to prevent an injustice to the contractor. The President would be empowered to prescribe regulations to further the purposes of the legislation. The enactment of the measure would afford, therefore, an additional criterion for the determination of those claims.

The bill would apply only to cases where supplies or services had been furnished between December 7, 1941, and August 14, 1945, even though such supplies or services had been furnished under contracts which had been completed and upon which final payment had been made. It would not be applicable to cases submitted under section 201 of the First War Powers Act of 1941, and which had been finally disposed of upon the merits prior to August 14, 1945.

Section 2 of the bill would provide that claims under the bill must be submitted prior to July 1, 1946.

The bill would place all contractors who had furnished material or supplies prior to August 14, 1945, in the same position, irrespective of whether their contracts had been amended prior to August 14, 1945.

In view of the foregoing considerations, I find no objection to the approval of the bill.

I have been advised by the Director of the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

TOM C. CLARK,
Attorney General.

The CHAIRMAN. We have received a letter from the office of the Secretary of the Navy, over the signature of O. S. Colclough, rear admiral, United States Navy, Judge Advocate General of the Navy, under date of March 12, 1946, concluding with the expression [reading]:

For the foregoing reasons, the Navy Department recommends against the enactment of the bill, S. 1477.

The letter will be inserted into the record at this point.
(The letter is as follows:)

NAVY DEPARTMENT,
Washington, March 12, 1946.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: The bill S. 1477 to authorize relief in certain cases where supplies or services have been furnished for the Government during the war, has been referred by your committee to the Navy Department with request for a report thereon.

The purpose of the bill is to empower the President to authorize, under such regulations as he may prescribe, departments and agencies of the Government to enter into contracts, without regard to existing law relative thereto "to prevent a manifest injustice to a firm, corporation, or individual" who has furnished supplies or services to the Government during the period beginning December 7, 1941, and ending August 14, 1945. The bill further provides that action to modify or amend contracts so as to prevent injustice may be taken without regard to whether or not supplies or services were furnished under a contract which has been completed and upon which final payment has been made. The bill further provides that its purposes shall not apply to cases finally disposed of under section 201 of the First War Powers Act of 1941. No action under provisions of the bill shall be taken unless application therefor is made prior to July 1, 1946.

Section 17 of the Contract Settlement Act of 1944 (58 Stat. 665; 41 U. S. C. 117) is quoted in part as follows:

"SEC. 17. (a) Where any person has arranged to furnish or furnished to a contracting agency or to a war contractor any materials, services, or facilities related to the prosecution of the war, without a formal contract, relying in good faith upon the apparent authority of an officer or agent of a contracting agency, written or oral instructions, or any other request to proceed from a contracting agency, the contracting agency shall pay such person fair compensation therefor.

"(b) Whenever any formal or technical defect or omission in any prime contract, or in any grant of authority to an officer or agent of a contracting agency who ordered any materials, services, and facilities might invalidate the contract or commitment, the contracting agency (1) shall not take advantage of such defect or omission; (2) shall amend, confirm, or ratify such contract or commitment without consideration in order to cure such defect or omission; and (3) shall make a fair settlement of any obligation thereby created or incurred by such agency, whether expressed or implied, in fact or in law, or in the nature of an implied or quasi contract."

It will be seen that the above-quoted provision of law affords relief to contractors who have furnished supplies or services to the Government. Cases where no formal contract exists and cases where there are technical defects or omissions in a contract are covered expressly by the foregoing quoted provision of existing law. This existing provision of law is considered adequate for the adjustment of meritorious claims relating to supplies and services furnished to the Government. It appears to be much broader than procedure followed under similar circumstances after World War I.

The single rule for granting relief under the bill S. 1477 is: (upon the determination by the head of a department or agency) "action is necessary to prevent a manifest injustice." This rule or standard appears vague and indefinite and impossible of uniform application. It is believed that enactment of S. 1477 would result in the filing of a vast number of claims requiring extensive investigation and that those considered meritorious would have no greater advantage under its terms than is now available under existing provisions of law. If relief cannot be granted under existing law, it is doubtful that relief could be granted pursuant to the enactment of the bill S. 1477.

For the foregoing reasons, the Navy Department recommends against the enactment of the bill S. 1477.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

For the Secretary of the Navy.

Respectfully yours,

O. S. COLCLOUGH,
Rear Admiral, United States Navy,
Judge Advocate General of the Navy.

(NOTE.—As will be seen by reference to his testimony at this hearing, Mr. J. Henry Neale, general counsel, Navy Department, requested and obtained committee permission to submit a new letter on behalf of the Navy Department. The new letter is as follows:

NAVY DEPARTMENT,
Washington, D. C., May 2, 1946.

Hon. PAT MCCARRAN,
Chairman of the Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: During the hearings on the bill S. 1477 "To authorize relief in certain cases where supplies or services have been furnished for the

Government during the war," held before a subcommittee of the Senate Judiciary Committee on April 12 and 13, it became apparent that the position of the Navy Department on the subject bill had not been clearly expressed in the report submitted by it under date of March 12, 1946. I am accordingly writing in amplification of that report and to set forth again the Navy's views as to the bill.

The basic reason for the Navy Department's objection to the bill is that it would subject the Government to the payment of an undetermined, but presumably large, amount of public funds for baseless claims by war contractors. To the extent that the claims of war contractors have merit, there is ample provision in existing law to accomplish their payment, and the enactment of the subject bill would simply confuse the situation, add considerable administrative burdens upon the contracting agencies, and would probably also result in some improper payments. The Navy Department also considers the pending bill defective and objectionable in certain details of its provisions.

Under the present law and practice, any war contractor or other person who has furnished materials or performed services for the Government without any contemporaneous agreement by a contracting officer to reimburse such contractor for the materials or services is assured of fair compensation therefor. This is provided for in section 17 of the Contract Settlement Act of 1944, quoted in the Navy Department's report of March 12, 1946, and also, where there is already an existing contract and the question is one of extras not covered by the contract or of a change in the requirements of the contract, is generally covered by the terms of the contract itself. Furthermore, where there is a contract but such contract does not express the terms of the agreement as both parties understood it or where there was a unilateral mistake on the part of the contractor alone but such mistake is one which was obvious or should have been apparent to the contracting officer, the contractor may obtain relief, upon application to the proper authorities, by way of reformation of the contract. A third class of cases where a contractor may obtain relief under existing provisions of law is where increased costs to him in the performance of his contract with the Government are due to a breach on the part of the Government of its contractual obligations.

Enactment of the pending bill S. 1477 to provide an additional remedy for war contractors and suppliers in situations such as those outlined above would serve no useful purpose, but on the contrary would impose undue burdens upon the contracting agencies and would only result in further confusion. What is more serious however, is that the door would be opened to other claims which are not meritorious or, if they have any merit or equity in them, should properly be considered for relief by way of private bills.

The Navy Department has consistently maintained the position that contractors who entered into contracts with the Government should be held to the terms of the contract in the absence of fault on the part of the Government, and that any loss resulting from business risks assumed by the contractor must be borne by him. By submitting and contracting for a price which eventually turns out to have been too low, the contractor obtained business which otherwise might have gone to others, and there does not seem to be any obligation—legal, equitable, or moral—upon the Government to reimburse the contractor for his losses.

Section 201 of the First War Powers Act, 1941, and Executive Order 9001 issued thereunder, authorized the Government to modify or amend contracts, with or without consideration, whenever the prosecution of the war would thereby be facilitated. Such authority is considered to have been granted, not for the purpose of affording relief to inefficient or unlucky contractors, but to aid the Government in fighting the war. In every case where relief has been requested under the authority of that statute, the determination has been made that the prosecution of the war would be facilitated by the amendment to the contract. The test has not been whether the contractor is considered, on equitable or other abstract grounds, to be deserving of relief, but whether it can fairly be said that the prosecution of the war would be facilitated by the payment of Government moneys without corresponding consideration moving to the Government.

With respect to the detailed provisions of S. 1477, the only standard prescribed for the allowance of claims made thereunder is that "such action is necessary to prevent a manifest injustice." This appears to be too vague and indefinite and would be extremely difficult, if not impossible, to apply administratively. There is also no time limit for the presentation of the claims, the only limitation being that the section is not applicable "to cases submitted under section 201 of the First War Powers Act, 1941, which have been finally disposed of under such section upon their merits prior to August 14, 1945." It would be difficult to

determine what cases are covered or excluded under such provision, as few applications have been submitted by contractors with specific reference to section 201 of the First War Powers Act. Also it would generally be impossible to determine what cases have been "fully disposed of upon their merits prior to August 14, 1945." The only sure test of final disposal is payment in full, as contractors rarely accept any determination as final and constantly reiterate the same claim despite prior denials by the contracting agency.

The Navy Department, therefore, believes that the bill S. 1477 should not be enacted and, if it is to be enacted at all, should be substantially amended.

Sincerely,

W. JOHN KENNEY,
Acting Secretary of the Navy.

The CHAIRMAN. We have received a letter from the War Department under date of March 18, 1946, concluding with the expression [reading]:

In view of the facts set forth above, the War Department considers the enactment of this proposed legislation in its present form objectionable. However, if S. 1477 were modified in the manner suggested above, the War Department would find no objection to the enactment of such legislation.

That letter will be inserted in the record at this point.

(The letter is as follows:)

WAR DEPARTMENT,
Washington, March 18, 1946.

Hon. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR MCCARRAN: The War Department is opposed to the enactment of S. 1477, Seventy-ninth Congress, a bill to authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

This bill provides for authorization by the President to departments or agencies of the Government which were authorized prior to August 14, 1945, to enter into contracts and into amendments or modifications of contracts under section 201 of the First War Powers Act, 1941, to enter into contracts and into amendments or modifications of contracts to afford relief to firms, corporations, or individuals who furnished supplies or services for the Government during the war. However, any action that might be taken pursuant to the proposed legislation would be confined to cases where supplies or services had been furnished between December 7, 1941, and August 14, 1945. Furthermore, the proposed statutory provision would not be applicable to cases submitted under section 201 of the First War Powers Act, 1941, which had been considered and disposed of on their merits prior to August 14, 1945. The proposed legislation specifically provides that action might be taken pursuant thereto whether or not the supplies or services were furnished under a contract which had been completed and upon which final payment had been made.

The bill further provides that any action taken thereunder would be limited to claims or requests for action submitted to the particular department or agency concerned prior to July 1, 1946.

The War Department has used the authority of the First War Powers Act and Executive Order No. 9001 to adjust contract prices whenever it was considered that such action would facilitate the prosecution of the war. In each case, the facts of the particular case were carefully investigated and analyzed in an attempt to determine whether making the requested adjustment in the contract would facilitate the procurement of goods or services. The types of cases which were favorably considered by the War Department fell into broad categories and as experience was gained, fairly uniform principles were adopted to aid in the disposition of the numerous cases presented. At the time of the surrender of the Japanese Government, the War Department reexamined the types of cases upon which relief had theretofore been given in an effort to formulate a definite policy on the disposition of future cases submitted under the First War Powers Act and Executive Order No. 9001. It was concluded that no relief should be granted after the surrender of the Japanese Government unless the action was required in order to insure continued production necessary to meet post VJ-day requirements. It was considered that only in

this narrow group of cases could the War Department make a finding that granting relief would facilitate the prosecution of the war. As a result, several petitions of contractors which were in process at the time of the surrender of the Japanes Government, or whose claims had not been presented to the War Department prior to such time, were denied even though the facts in the particular case would have justified favorable action if such action had been taken prior to the surrender.

It is understood that the purpose of S. 1477 is to afford financial relief to those contractors who suffered losses in the performance of war contracts in those cases where the claim would have received favorable consideration under the First War Powers Act and Executive Order No. 9001 if action had been taken prior to the capitulation of the Japanese Government. The War Department is in general accord with this purpose. Although adjustment of prices pursuant to the First War Powers Act was not a matter of legal right and was only made to facilitate procurement of necessary matériel, the few contractors whose cases cannot now be favorably considered may in a sense be said to be discriminated against.

In administering relief under the First War Powers Act and Executive Order No. 9001, the War Department complied with the decision of the Comptroller General of the United States (B–48339 dated April 7, 1945), by denying relief in those cases where performance had been completed and final payment made under the contract. It is considered that the relief granted under S. 1477 should not be broader than that granted under the First War Powers Act. It is the opinion of the War Department that it would be undesirable to reopen at this time the large number of contracts which have been completed and final payment made thereon. An exception may possibly be made in those cases where the petition for relief was filed by the contractor prior to final payment. Furthermore, if a contract has been terminated and final settlement reached, the finality provided in such cases by the Contract Settlement Act of 1944 should be preserved. To the extent that S. 1477 permits the reopening of completed contracts under which final payment has been made and terminated contracts which have been finally settled, the proposed legislation would appear to be objectionable.

To meet the objections stated above, it is suggested that the provisos found after the colon on line 5 of page 2 and ending on line 16 of page 2 (all inclusive) be deleted and the following substituted therefor: "*Provided*, That action taken pursuant to this section shall be confined to cases where the operative facts giving rise to the petition of the contractor occurred between December 7, 1941, and August 14, 1945: *Provided further*, That this section shall not be applicable to contracts which have been terminated and final settlement agreement executed, whether or not such settlement agreements have been reopened pursuant to section 6c of the Contract Settlement Act of 1944: *Provided further*, That no completed contract shall be amended or modified after final payment except in those cases where a written petition for relief was filed by the contractor with the Department or Agency prior to final payment: *Provided further*, That this section shall not be applicable to cases where requests for amendments or modifications were submitted under section 201 of the First War Powers Act, 1941, and were considered and finally disposed of under such section upon their merits prior to August 14, 1945."

Only a comparatively small number of meritorious cases coming within the general purview of S. 1477 have been presented to the War Department. The authority granted by S. 1477, modified in the manner suggested above, will afford an expeditious method of granting relief for nearly all of such cases.

The War Department is unable accurately to estimate the fiscal effect of the enactment of S. 1477.

In view of the facts set forth above, the War Department considers the enactment of this proposed legislation in its present form objectionable. However, if S. 1477 were modified in the manner suggested above, the War Department would find no objection to the enactment of such legislation.

The Bureau of the Budget has advised that while there would be no objection to the submission of such report to the committee as this Department may deem appropriate, the Department of Justice has been advised there would be no objection to the presentation of its proposed report, a copy of the latter report no doubt being available to the committee.

Sincerely yours,

ROBERT P. PATTERSON,
Secretary of War.

The CHAIRMAN. We have received a letter from the United States Maritime Commission, dated March 18, 1946, over the signature of Edward Macauley, acting chairman, concluding with the expression [reading]:

The Commission does not believe that the legislation is necessary or desirable so far as the Commission is concerned.

That letter will be inserted in the record at this point.

(The letter is as follows:)

UNITED STATES MARITIME COMMISSION,
Washington 25, D. C., March 18, 1946.

HON. PAT MCCARRAN,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR MCCARRAN: You have requested the views of the Maritime Commission with respect to S. 1477, a bill to authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

Section 1 of the bill would authorize any department or agency of the Government which, prior to August 14, 1945, was authorized to enter into contracts or modifications of contracts under section 201 of the First War Powers Act, 1941, to enter into contracts, amendments or modifications of contracts without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever the head of such department or agency makes a determination that such action is necessary to prevent a "manifest injustice" to a firm, corporation, or individual who has furnished supplies or services for the Government. Such authority would be exercised only if a department or agency of the Government were authorized by the President and would be carried out under regulations prescribed by the President. Action taken under the bill would be confined to cases where the supplies or services have been furnished between December 7, 1941, and August 14, 1945. Action would be allowed, however, in such cases where the supplies or services were furnished under a contract which had been completed and upon which final payment had been made.

The bill further provides that it would not apply to cases submitted under section 201 of the First War Powers Act, 1941, which had been finally disposed of under said section upon their merits prior to August 14, 1945.

Section 2 of the bill provides that no action shall be taken except with respect to claims or requests submitted to the department or agency of the Government concerned prior to July 1, 1946.

The Commission has not had serious difficulty in equitably adjusting meritorious claims of contractors, at least where there has been a manifest injustice to the contractor. The legislation would naturally be an invitation to present claims of doubtful merit, to say the least, and, if the administrative actions involved are not to be accepted as already properly determinative of the claim involved, entail detailed and costly investigations thereof.

It is understood that you have requested the views of other agencies concerned. The Commission does not believe that the legislation is necessary or desirable so far as the Commission is concerned, but would have no objection to its enactment if the Congress considers it to be in the interest of the national economy.

This report has been submitted to the Director, Bureau of the Budget, and we are now advised that there would be no objection to its submission to your committee.

Sincerely yours,

EDWARD MACAULEY, *Acting Chairman.*

Mr. SOURWINE. Mr. Chairman, we have some other correspondence which has been offered for the record. This is a letter from Mr. Edwin D. McKee, the assistant director of the Museum of Northern Arizona, which Senator McFarland wished inserted in the record.

The CHAIRMAN. Among other expressions in this letter which is dated October 18, 1945, is the following [reading]:

This bill, S. 1477, has been referred to the Committee on the Judiciary, and because of its nature it should receive the committee's prompt consideration, and be reported back to the Senate for appropriate action.

That letter will be inserted in the record.
(The letter is as follows:)

MUSEUM OF NORTHERN ARIZONA,
Flagstaff, Ariz., October 18, 1945.

Hon. ERNEST MCFARLAND,
Senate Office Building, Washington, D. C.

DEAR SIR: Senator Scott W. Lucas, of Illinois, by unanimous consent, introduced in the Senate on October 11, 1945, S. 1477, a bill to authorize relief in certain cases where supplies or services have been furnished for the Government during the war. Senator Lucas' statement in introducing the bill is attached. This bill is an amendment to the War Powers Act.

I have no financial interest in contracts which would be affected by the bill. However, I am familiar with a contract that came under the War Powers Act, which covered the construction of the Island Creek Dam, which was necessary in order to make effective the flood wall that had been constructed around Paducah, Ky. This dam prevented the flooding of Paducah in the near record flood in the spring of 1945, and was of unquestionable benefit to the war effort in protecting the war industries and railroads located within the confines of the wall.

The contractor requested relief under the War Powers Act in the early part of 1944, because of the alleged mutual mistakes in the negotiations and award of the contract, and because of other items, all of which are set forth in detail in the claims which were filed. The processing of these claims to meet the requirements of the Army Service Forces consumed more than 15 months, so that the claim did not reach the Army Service Forces until August 28, 1945. The Army Service Forces frankly stated that they would have approved payment of $173,000 of relief, unanimously approved by the district engineer, the division engineer, and the Chief of Engineers, and may have considered paying some additional items that were approved by one or the other, but not by all three, but because the claim did not reach them until a few days after the cessation of hostilities on August 14, 1945, the general counsel of the Army Service Forces had ruled that under the wording of the War Powers Act this claim could not be considered. For that reason the contractor was denied relief. The contractor was diligent in his efforts to get the claim in shape, and the delay was largely the result of the time required by the engineers to process the claim.

The contractor is from Chicago, and since the job is located in Kentucky, he discussed his problems with Senator Barkley. Senator Barkley thought that something should be done to prevent such manifest injustice, and advised Senator Lucas to prepare an amendment.

This bill S. 1477 has been referred to the Committee on the Judiciary, and because of its nature it should receive the committee's prompt consideration and be reported back to the Senate for appropriate action. The writer will appreciate your support of S. 1477. It is certainly inequitable to deny relief to a contractor, entitled to relief under the war War Powers Act, simply because through no fault of his, the petition did not reach the Army Service Forces before the cessation of hostilities.

My brother, Mr. John S. McKee, is a partner of the Lake States Engineering Co., which company had the contract for the Island Creek Dam at Paducah, Ky. This company also handled a large volume of other war construction for the Army, Navy, and war contractors. Mr. McKee may stop in to see you and give you any further details you may desire, in order to show you the injustice that will be done to his company if a bill similar to that introduced by Senator Lucas is not enacted.

Very truly yours,

EDWIN D. MCKEE, *Assistant Director.*

The CHAIRMAN. A letter has been received from the Plamondon Decorating Co., 308 North Michigan Avenue, Chicago, dated October 30, 1945, concluding with the expression [reading]:

Based on the above facts, we trust that your approval of bill S. 1477 will be forthcoming.

That letter will be inserted in the record.
(The letter is as follows:)

PLAMONDON DECORATING CO.,
Chicago 1, October 30, 1945.

The Honorable Senator MCCARRAN,
United States Senate, Washington, D. C.

SIR: We are writing to request your favorable consideration of bill S. 1477.

We were painting subcontractors of the Enjay Construction Co. for the hospital section at Camp Ellis, Ill.

Because of conditions beyond their control, Enjay Construction Co. sustained such a loss that they were unable to pay off their subcontractors, including ourselves.

Relief was recommended to Enjay Construction Co. by the district engineer's office, Chicago, the division engineer's office, Chicago, and the Chief of Engineers in Washington under the War Powers Act.

The termination of the war has made it necessary to amend this act so that Enjay Construction can be paid, and they, in turn, can compensate their subcontractors.

Our branch of the work at Camp Ellis was completed in a manner entirely satisfactory to the area engineer, but because of Enjay's difficulty they were unable to complete payment of work which we did.

During the war, practically all of our business was confined to defense projects, army camps, ordnance works, etc., and we feel that, in our small way, we have contributed to the successful conclusion of the war.

The portion of our capital now involved in this claim would aid us greatly in our work of reconverting plants to a peacetime basis. Lack of this capital has impeded our effort.

Based upon the above facts, we trust that your approval of bill S. 1477 will be forthcoming.

Very truly yours,

PLAMONDON DECORATING CO.

The CHAIRMAN. We have received a letter from the McGann Manufacturing Co., Inc., of York, Pa.

Mr. SOURWINE. That letter was addressed to Senator Lucas and was transmitted to the committee by Senator Lucas.

The CHAIRMAN. This letter has the expression [reading]:

This bill would certainly cure many inequalities suffered by smaller business during the war effort. As you well know, all of the large corporations took most of their contracts on a cost-plus or on a fixed-fee incentive basis, whereas the smaller companies were forced to bid on their contracts, and while most small businesses did an excellent job in the war effort, their experience as to cost was inadequate to properly protect them from losses.

That letter will be inserted in the record.
(The letter is as follows:)

MCGANN MANUFACTURING CO., INC.,
York, Pa., November 6, 1945.

Senator SCOTT LUCAS,
United States Senate Building, Washington, D. C.

MY DEAR SENATOR: It was with a great deal of hope and interest that I read the bill, S. 1477, which you recently introduced in the Senate of the United States.

This bill would certainly cure many inequalities suffered by smaller business during the war effort. As you well know, all of the large corporations took most of their contracts on a cost-plus or on a fixed-fee incentive basis, whereas the smaller companies were forced to bid on their contracts, and while most small businesses did an excellent job in the war effort, their experience as to cost were inadequate to properly protect them from losses.

My company suffered a loss of approximately $260,000, as a subcontractor, working for a prime contractor building LST boat sections for the Navy. In this connection the prime contractor had a cost-plus contract for many months, until they were able to ascertain their costs, then they went on a fixed-fee incentive basis insuring them against any losses. We, however, were forced to take the subcontract on a fixed-fee basis and as a result suffered this terrific loss.

In addition to this loss, we have had approximately a $75,000 loss on a contract from the Maritime Commission, and these two losses have placed us in a position where unless we get relief, this company will be forced into bankruptcy, throwing approximately 250 people out of work, and of course destroying the capital equities of the owner.

We believe that the Government of the United States does not expect its citizens to suffer these losses if the work was done honestly and conscientiously on war work, and I would, therefore, appreciate very much an opportunity to talk to you personally, or appear before your committee to present my case.

Yours very truly,

McGann Manufacturing Co., Inc.,
Clyde H. Smith, *President.*

The Chairman. We have received a letter on the letterhead of Musgrave & Sightler, of Washington, D. C., dated February 4, 1946, signed by A. S. Musgrave, containing this expression, among others [reading]:

As we understand it, the amendment which Senator Lucas proposes would be exactly in point to give relief in this type of case.

The writer of this letter sets forth a type of case. This letter will be inserted in the record.

(The letter is as follows:)

Washington, D. C., *February 4, 1946.*

Re S 1477

Senator Pat McCarran,
Senate Judiciary Committee,
Senate Office Building, Washington, D. C.

Dear Senator McCarran: Because a client of this office is in a situation which so exactly fits that of the small businessman to whom it is hoped to afford relief through the provisions of the above bill, we are moved to write you something of the circumstances.

This client is Mr. Walter L. Wullschleger who had a small mill at Frankfort, Kans., making hard wood. Because he had received a number of Government bulletins explaining what could be done by such small manufacturers to aid the war effort and he was moved with great patriotism, he converted his mill to make gunstocks. He accepted several orders from a subcontractor under original War Department ordnance contracts and proceeded to obtain a victory loan through a local bank in the amount of $18,000. Out of this, he built the gunstock mill and purchased the necessary machinery and timber, logs, and lumber, providing also for necessary insurance. Approximately one-third of the loan was expended in plant facilities before production started. The loan was financed on demand notes and the terms required that all receipts from sales of production were to be applied on the notes. Production costs dissipated the remaining funds very rapidly and quite early in the production, a real problem arose due to the fact that the proceeds from the sales were not adequate to repay the notes. A part of these proceeds from sales were returned by mutual agreement on the part of the bank, and the Federal Reserve Bank of Kansas City, Mo., which was the bank making the loan, to the current fund supporting the production.

Mr. Wullschleger was able to fill the first two contracts amounting to 80,000 gunstocks but was left completely without funds and unable to continue on a third contract. The banks became alarmed and refused further financing, demanding repayment of the loan. As Mr. Wullschleger and his wife had pledged everything which they had, all of their assets of every kind and character were liquidated and they were left practically paupers. We quote from Mr. Wullschleger as to his analysis of the loss:

"The main reason for the losses incurred was simply this: Ceiling price too low for cost of production. After the funds had been dissipated, the figures showed that the loss was 14 cents per blank. Prices were as follows on the material produced.

" 'Contract No. 1. 45,000 Thompson machine gun blanks, 35 cents each f. o. b. Savage Arms Co; 5 cents each allowed for kiln-drying, leaving a balance of 30 cents each for production and profit.

" 'Contract No. 2. 35,000 handguards for Springfield rifle, 23 cents each not KD, f. o. b. Syracuse, N. Y.'

"With these facts stated as briefly as possible, do you think there is any hope of recovering any part of my losses? I have been told that if this case could be brought before the right department of Government, an adjustment could be secured.

"The amount involved is 14 cents each on 80,000 gunstock blanks, shipped to the prime contractors and accepted by them. This $11,200 represents the actual loss and does not compensate me personally in the amount of even one cent for my own labor and trouble incurred in directing the operation."

Following the liquidation, the Federal Reserve Bank of Kansas City wrote a very beautiful letter to Mr. Wullschleger, copy of which is attached. Mr. Wullschleger himself said of his loss about September 1, 1944, the following:

"This is a sad matter for me, but I am warmed by the fact that these guns made possible by my effort and personal sacrifice have helped to bring us this far on the road to victory and promise to secure a complete victory over our enemies before very long."

We could not do anything under renegotiation because the contract had been terminated. We attempted to file a formal claim with the Rochester ordnance district which informed us that it could not consider the claim because:

"The granting of relief after discontinuance of operations would not facilitate the prosecution of the war. Since the First War Powers Act and Executive Order No. 9001 require that a finding be made that the granting of the relief requested would facilitate the prosecution of the war, it does not appear that the claim submitted is one which could be approved."

As we understand it, the amendment which Senator Lucas proposes would be exactly in point to give relief in this type of case. We have a great deal of information on this matter and will be pleased to furnish you with anything further which may be of interest to your committee.

Trusting that the bill may be successful, and with all good wishes.

Sincerely yours,

MUSGRAVE & SIGHTLER.
By A. S. MUSGRAVE.

Copies to Senator Scott Lucas, 428 Senate Office Building; Mr. Dan Eastwood, House Committee on Small Business, House Office Building, Washington, D. C.

[Enclosure with foregoing]

FEDERAL RESERVE BANK OF KANSAS CITY,
June 18, 1945.

Mr. WALTER L. WULLSCHLEGER,
Frankfort, Kans.

DEAR MR. WULLSCHLEGER: The First National Bank of Frankfort has just informed us that the unpaid balance of your War Department guaranteed loan has now been paid in full and the obligation fully discharged.

I could not let the occasion pass without commending you on the very fine attitude you have evidenced in this matter from the beginning, and on the sincere efforts you have made to discharge the debt. It is indeed a refreshing attitude these days to find a person who faithfully and conscientiously recognizes a trust when there are so many people inclined to look upon debts all too lightly, which has a tendency, in my opinion, to tear down the very moral fabric of our economic structure.

With assurance of my very high personal regard for you, and with wishes for your success and continued happiness.

Sincerely,

HENRY O. KOPPANG.

The CHAIRMAN. We have received a letter from the Shank Metal Products Co., New York City, dated February 13, 1946, over the signature of Edwin W. Shank, which letter will be inserted in the record.

(The letter is as follows:)

SHANK METAL PRODUCTS CO.,
New York, February 13, 1946.

Senator PAT MCCARRAN,
United States Senate, Washington, D. C.

DEAR SENATOR: I am very much interested in securing your help in the approval by committee and final passage of Senator Lucas' bill, S. 1477, to reimburse contractors who have had losses on war contracts.

Due to losses which we incurred on prime war contracts, we are now operating our business on borrowed capital. At the end of 1944 we were bankrupt and I hope you will agree that it is hardly fair for the Government to finance and win the war by "pushing us to the wall."

We operate a small plant and employ 50 men. In 1943 we made some money on war contracts and of course we paid most of it out in taxes. For the year 1944, we have a certified copy of an audit made of our books by the Government contracting officer showing that we had a loss of $88,000. We are informed that no relief is possible except through congressional action; that the law is so written that the contracting officer has absolutely no discretion in the matter. In addition to this, it will interest you to know that we are being subjected to renegotiation for 1943 and will have to pay an additional amount on 1943 profits but that no consideration is being given to our loss in 1944. This, unfortunately, is another "one-way street" and I hope you can help to remedy the situation.

I understand that bill, S. 1477, would offer relief and I hope you'll lend your assistance in that direction. With thanks in advance, I remain,

Sincerely yours,

SHANK METAL PRODUCTS CO.
EDWIN W. SHANK.

The CHAIRMAN. This is a letter from the Lake States Engineering Co.

Mr. SOURWINE. Senator Wheeler asks that this letter be inserted in the record.

The CHAIRMAN. On the letterhead of the Lake States Engineering Co., Chicago, Ill., dated April 10, 1946, is a letter over the signature of John S. McKee. Among other things, he says:

Enactment of S. 1477 is important so that this contractor and others in similar circumstances may receive the payments which would otherwise have been made, except for the cessation of hostilities.

The letter will be inserted at this point.

(The letter is as follows:)

LAKE STATES ENGINEERING CO.

Chicago

WASHINGTON, *D. C., April 10, 1946.*

Re S. 1477, to authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

Hon. BURTON K WHEELER,
Senate Office Building, Washington, D. C.

DEAR SENATOR WHEELER: I am writing to you as a member of the subcommittee to request your consideration and support for S. 1477. A copy of this bill is enclosed, together with the introductory remarks of Senator Lucas and factual data showing the urgent necessity for its enactment.

Legislation of this type is necessary to enable the Army to make payments to which contractors were equitably entitled under the First War Powers Act but which were not made on account of the sudden cessation of hostilities on August 14, 1945. Failure to make such payment for work which had been completed is a manifest injustice to the contractor and such a condition was certainly not contemplated by the original act.

Your support of S. 1477 is therefore earnestly requested so that this contractor and others in a similar position may receive the payments which would otherwise have been made, except for the cessation of hostilities.

Very truly yours,

LAKE STATES ENGINEERING CO.
JOHN S. MCKEE, *Partner.*

NECESSITY FOR ENACTMENT OF S. 1477, TO AUTHORIZE RELIEF IN CERTAIN CASES WHERE SUPPLIES OR SERVICES HAVE BEEN FURNISHED FOR THE GOVERNMENT DURING THE WAR

1. This bill is necessary to enable the Army to correct injustices to certain war contractors and suppliers caused by the sudden cessation of hostilities. The Navy and Maritime Commission are also included, but it is the contractor's understanding that these services have few if any cases affected by the amendment, principally due to their more extensive use of the cost-plus-fixed-fee type of contract, where changes due to the war had little effect on the contractor.

2. The Lake States Engineering Co. is one of those particularly affected by the legislation. The factual background of this case is as follows: This contractor was handling a number of urgent war contracts including the fabrication of hull assemblies for Army cargo vessels, pier construction at the Philadelphia Navy Yard and construction of the Island Creek Dam at Paducah, Ky. This Island Creek Dam for the Army engineers was necessary in order to make effective the flood wall which had previously been constructed around the city of Paducah.

3. This contractor requested relief under the First War Powers Act in the early part of 1944, because of the mutual mistakes in the negotiations and award of the Island Creek Dam contract, delays by the Government, and because of other items, all of which are set forth in detail in the claims which were filed. Relying on representations of the contracting officer that continuation of the work would assist, if not assure, the granting of the relief requested, this contractor was able to secure sufficient financing and credit to complete all contracts without interruption or delay. Consequently, the dam was completed by this contractor in time to prevent flooding of Paducah in the near record flood in the spring of 1945, and was of unquestionable benefit to the war effort in protecting the industries and railroads located within the confines of the wall.

4. The processing of these claims to meet the requirements of the Army Service Forces consumed more than 15 monthes so that the claim did not reach the Army Service Forces until August 28, 1945. The Army Service Forces frankly stated that they would have approved payment of $173,000 of relief unanimously approved by the district engineer, the division engineer and the Chief of Engineers, and may have considered paying some additional items, aggregating over $75,000, that were approved by one or the other, but not by all three, but, because the claim did not reach them until a few days after the cessation of hostilities, on August 14, 1945, the general council of the Army Service Forces had ruled that under the wording of the War Powers Act, this claim could not be considered. Their counsel interpreted the act to require a certification that "payment of the money would facilitate the war." For that reason this contractor was denied relief, even though the work itself had been completed and did in fact facilitate the war. We were diligent in our efforts to prepare and submit the claim with the voluminous records and exhibits required, and the delay was largely the result of the time required by the engineers to process the claim.

5. The amendment as drawn is considerably broader than would be necessary to take care of applications for relief that have been made to the various technical services and which, for various reasons, had not reached the Army Service Forces prior to the cessation of hostilities with Japan. It is our understanding that Senator Lucas learned that some of his constituents had good claims for relief under the War Powers Act, which had not been presented, and he thought, therefore, that it would be advisable to make the language of the amendment sufficiently broad to cover such claims.

6. It is certainly inequitable to deny relief to a contractor entitled to relief under the War Powers Act, simply because, through no fault of his, the petition did not reach the Army Service Forces before the close of hostilities. In the case of the Lake States Engineering Co., a great injustice would be suffered if a bill similar to S. 1477 is not enacted. There would be no choice except liquidation of the company which would still leave large sums due the creditors whose continued support enabled the contractor to complete the contract on schedule. Such action would leave the two partners under a tremendous debt and with no equipment, organization, or credit for future operation.

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7. Enactment of S. 1477 is important so that this contractor and others in similar circumstances may receive the payments which would otherwise have been made, except for the cessation of hostilities.

LAKE STATES ENGINEERING CO.,
JOHN S. MCKEE, *Partner.*

The CHAIRMAN. Is there anything further? Senator, do you care to be heard?

Senator LUCAS. Yes, Mr. Chairman.

STATEMENT OF HON. SCOTT W. LUCAS, A UNITED STATES SENATOR FROM THE STATE OF ILLINOIS

Senator LUCAS. Mr. Chairman, in line with the letters which the chairman has introduced into the record, I should like to also submit the letter dated March 1, 1946, by Harold D. Smith, Director of the Budget, in which he says in the last paragraph [reading]:

It seems to me that the position of the Department of Justice is well taken and I, therefore, advised the Attorney General that there would be no objection to the submission of the proposed report to the committee.

I should like to have that included in the record.

The CHAIRMAN. Very well.

(The letter is as follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, 25, D. C., March 1, 1946.

Hon. SCOTT W. LUCAS,
United States Senate, Washington, D. C.

MY DEAR SENATOR LUCAS: Reference is made to your letter of January 10, 1946, regarding the proposal contained in S. 1477, a bill to authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

There is transmitted herewith, a copy of a report which the Department of Justice proposes to submit to the Senate Committee on the Judiciary on this measure in which they are inclined to favor, for the reasons set forth therein, the enactment thereof.

It seems to me that the position of the Department of Justice is well taken and I, therefore, advised the Attorney General that there would be no objection to the submission of the proposed report to the committee.

Very truly yours,

HARVEY S. SMITH, *Director.*

Senator LUCAS. This is not for the record, but I presume that this report that I have here from the Attorney General is the same one that was introduced into the record a moment ago. Would you compare that, Mr. Sourwine, and see if it is?

Mr. SOURWINE. That is correct.

Senator LUCAS. Mr. Chairman, I should like to take just a little time of the committee and present my reasons for the introduction of Senate bill 1477.

The CHAIRMAN. You may proceed.

Senator LUCAS. Mr. Chairman and members of the committee, the primary reason for the introduction of Senate bill 1477 grows out of the decisions of the War Department, primarily the War Department, for failure to pay certain contractors and subcontractors amounts they claim to be due and owing under section 201 of the First War Powers Act of 1941.

At this point I would like to introduce section 611 of title 50 of Supplement IV of the United States Code, 1940 edition, which is rather short, and which is section 201 of the First War Powers Act.

The CHAIRMAN. That may be inserted in the record at this point.

(It is as follows:)

SEC. 201. The President may authorize any department or agency of the Government exercising functions in connection with the prosecution of the war effort, in accordance with regulations prescribed by the President for the protection of the interests of the Government, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made and to make advance, progress and other payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts whenever he deems such action would facilitate the prosecution of the war: *Provided*, That nothing herein shall be construed to authorize the use of the cost-plus-a-percentage-of-cost system of contracting: *Provided further*, That nothing herein shall be construed to authorize any contracts in violation of existing law relating to limitation of profits: *Provided further*, That all acts under the authority of this section shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be incompatible with the public interest.

Senator LUCAS. I would like to insert also into the record even though it may be repetitious, Senate bill 1477, which is rather short; and I do that, Mr. Chairman, in order that anyone who might be looking at the record could compare the two, having them one after the other.

The CHAIRMAN. Very well.

(The bill is as follows:)

A BILL To authorize relief in certain cases where supplies or services have been furnished for the Government during the war

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government (which prior to August 14, 1945, was authorized to enter into contracts and into amendments or modifications of contracts under section 201 of the First War Powers Act, 1941), in accordance with regulations prescribed by the President, to enter into contracts and into amendments or modifications of contracts, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever the head of such department or agency makes a determination that such action is necessary to prevent a manifest injustice to a firm, corporation, or individual who has furnished supplies or services for the Government: *Provided*, That action taken pursuant to this section shall be confined to cases where such supplies or services have been so furnished between December 7, 1941, and August 14, 1945; and action may be taken under this section in such cases whether or not such supplies or services were furnished under a contract which has been completed and upon which final payment has been made: *Provided further*, That this section shall not be applicable to cases submitted under section 201 of the First War Powers Act, 1941, which have been finally disposed of under such section upon their merits prior to August 14, 1945. All Acts under the authority of this section shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be incompatible with the public interest.

SEC. 2. No action shall be taken under this Act except with respect to claims or requests for action thereunder submitted to the department or agency of the Government concerned prior to July 1, 1946.

Senator LUCAS. Mr. Chairman, I now want to give to the committee the facts briefly in about three cases that have reached my office, which cause me to become interested in legislation which seeks to amend section 201 of the original War Powers Act.

Now, the three cases which have been brought to my attention come from concerns who have their principal place of business in Illinois; and as a result of some consultation with the representatives of these concerns I reached a very definite conclusion that these contractors were being penalized as a result of the failure of the War Department primarily to give any relief under section 201 of the War Powers Act.

I might say before taking up these cases that I understand the position of the Navy is that they have a sufficient power at the present time under the act to settle all just and adequate claims. I may be wrong about that, but I believe that I am right; and if I am wrong I believe the members representing the Navy will correct me. As I understand, they believe that this legislation that I have caused to be introduced covers a broader field than the First War Powers Act contemplated, and therefore they have some objection to it, and I think that the Maritime Commission is probably in the same position. It is the War Department that is making the strenuous objection to this legislation.

Now, Mr. Chairman, I should like to direct attention to the case of the Lake States Engineering Co. of Chicago, Ill., on account of the construction of an Island Creek Dam at Paducah, Ky. I think that I can probably do it best simply by reading what they say here, and it is not too long, and then the record will be complete. This is dated September 8, 1945 [reading]:

DEAR SENATOR LUCAS: On August 31, 1945, we wrote you requesting congressional action to clarify or supplement the War Powers Act so that the equitable relief may be granted thereunder which we believe was the clear intention and purpose of the act. At the same time we also wrote a similar letter to Senator Alben W. Barkley, of Kentucky, and have since had several meetings with Senator Barkley to review additional data pertaining to our petition for relief. At his request we conferred with Lt. Col. L. C. Lozier of the Chief of Engineers Office who reviewed our petition in detail to determine if it could be handled administratively instead of under the War Powers Act.

Briefly, the conclusions of Colonel Lozier were:

(*a*) Over $173,000 was recommended for approval under the War Powers Act by the contracting officer and the Corps of Engineers.

(*b*) An additional amount of approximately $75,000 was approved by some of the offices, but their differences have not been reconciled at this date.

(*c*) Only $25,000 to $30,000 of this total of $248,000 could be paid under the contract.

These last items will be referred back to the district promptly for processing. The remaining and principal items of the petition for relief were all due to the manner in which this work was negotiated and handled as a war contract and were therefore not subject to consideration except under the War Powers Act.

Payment of the relatively small amount reimbursable under the contract would only be sufficient to pay off a small portion of the total owed to creditors and advanced by banks and sureties in order to complete the work without delay to the war effort. Small creditors would lose out entirely. After disbursing this amount the Lake States Engineering Co. would then have no other choice except dissolution.

The Secretary of War holds that no payments can be approved for relief under the First War Powers Act and Executive Order 9001, after the cessation of hostilities, even though the work was performed earlier and was itself of benefit to the war effort.

That is the primary point that is involved in all of these matters.

This is based upon the interpretation that the law restricts payments for relief under the War Powers Act for amendments to an existing contract to require a certificate that these payments, at the time they are made, will aid the war effort. In other words, the language, "will aid the war effort," is the language which, we are told, prevents the Secretary of War from granting relief on work that has been performed.

A number of petitions for relief were undoubtedly stopped by the cessation of hostilities. These may or may not have been entitled to the relief requested. However, the petition for relief of the Lake States Engineering is especially deserving of consideration, for the amount of approximately $173,000 had been unanimously approved by all branches of the Corps of Engineers prior to the cessation of hostilities. Further, the Army Service Forces openly stated that their approval was only withheld because administrative procedure kept the petition from reaching them until after the cessation of hostilities.

Col. Park Holland of the Army Service Forces (phone, Republic 6700, extension 2413) is thoroughly familiar with War Powers Relief cases, including ours, in the event further information is desired as to the position of the War Department.

The foregoing clearly shows that a serious injustice is done this contractor who completed the Island Creek Dam under extreme financial difficulties. Its actual completion in time to prevent flooding of the homes and war industries of Puducah during the near record 1945 flood, was only possible because this contractor secured additional credit and financing based on the assurance of the support of the district engineer in a petition for relief under the War Powers Act. We are confident, however, that a correction of this situation can be accomplished through your office.

The writer would be glad to review this petition for relief with you at your convenience with regard to such amendment or Executive order as you consider most suitable.

Very truly yours,

_____.

Now, that is No. 1 and the point that I raised primarily, Mr. Chairman and members of the committee, is the fact that all branches of the Army had agreed that this fellow at least was entitled to $173,000 and then hostilities ceased and because other questions were involved where they could not be in agreement, then the War Department, as I understand it, takes the position that under the War Powers Act, the hostilities having ceased they could not pay any of it.

The CHAIRMAN. Notwithstanding the fact that they approved it before?

Senator LUCAS. It was approved before, but because as I understand this petition, and I am only quoting from what Mr. McKee says, as I understand it, because all of it was not approved and was not out of the way before the cessation of hostilities, that under the War Powers Act they cannot pay any of it and therefore before they could pay they would have to have legislation.

Now, in view of that statement, and in view of that position that the War Department took, that is the very reason why the Senator from Illinois has filed Senate bill S. 1477, which is nothing more or less than an amendment to the original act, which would give to the War Department the power to do the very thing that they claim that they did not have the power to do.

I will read you another case. It comes from the Hanover Woolen Mills Co., established 1864, from Hanover, Ill. This is a petition or claim for equitable relief from a $97,000 loss resulting from a contract made with the Philadelphia Quartermaster Depot, 1943. This contract was for 250,000 yards of 32-ounce O. D. melton overcoating.

Hanover Woolen Mills Co., established 1864 is a sole industry in the town of 1,600. Its continuation definitely affects the public interest. [Reading.]

The Hanover Woolen Mill devoted the major part of its production to the manufacture of cloth for the Army from June 1940 to September 1945. It was a vital small defense plant before and during the entire war period.

From June 1940 to April 1943 the mill completed five contracts for 20-ounce O. D. melton suiting.

In April 1943 the mill was forced to either take an Army contract for 32-ounce O. D. melton overcoating at a price dictated by the Army, or close its doors. This duress was caused by a combination of:

(*a*) Conservation Order 73.

(*b*) M. R. O. regulations.

(*c*) Dictates of the Procurement Division, Philadelphia Quartermaster Depot.

This 32-ounce overcoating was an experimental item for the mill and the contract was taken at a price of $2.95 per yard, dictated by the Army, and not at the mill's quotation of $3.31 per yard, which included contingencies for unforeseen difficulties and risks.

This contract resulted in a loss operation of approximately $97,000, because:

(*a*) Wage increases, effective during the production period, were granted by the NWLB Case 6-6656.

(*b*) The Philadelphia quartermaster made a change in procurement schedules.

(*c*) The mill was not suitably machined or equipped to produce 32-ounce overcoating, as all its civilian production had been 20-ounce or lighter cloth.

The mill in December 1943 and January 1944 notified the Philadelphia Quartermaster Depot of the loss accumulating, and requested relief or cancellation of contract. In turn, it was urged to complete the contract because if it did not, "field units would go into action not fully equipped;" and to petition the Washington Quartermaster Depot for relief.

A conference was held in the Washington Quartermaster Depot on March 30, 1944. Relief or cancellation contract was requested. The Army officers urged completion of contract, and that the mill stay in operation for subsequent Army production.

At the Washington meeting, above mentioned, legal officers of the quartermaster depot advised the mill to file a written petition for relief accompanied by a complete accountant's report, stating that such petition would be acted on.

On April 17, 1944, the Army was notified that a written petition according to their suggestions and advice would be filed as soon as it could be completed.

Such petition based on the First War Powers Act and its subsequent regulations was filed with the quartermaster depot on July 2, 1944, before the contract was completed.

Early in September 1944 the contract was completed and final payment subsequently made.

On September 26, 1944, the Army Service Forces wrote to mill as follows: "There is no authority under the terms and conditions of the contract or the procurement regulations to grant you relief."

From October 17, 1944, to September 1, 1945, the mill was urged by the Army to accept and did complete four subsequent contracts for 20-ounce melton suiting. The prices for these four contracts were established by redetermination with the Philadelphia quartermaster accountants after they had made a 6-week examination of the mill's records and books.

The prices the Army accountants determined for these four 20-ounce suiting contracts ranged from $2.998 to 3.1756 per yard, thus being from 5 cents to 22½ cents higher per yard than the Army had allowed the mill for the subject 32-ounce overcoating contract, which required 60 percent more raw wool, more processing, and was slower producing.

It is obvious that the War Department by its own determination admits that in compelling the mill to take the instant contract for $2.95 per yard, it compelled the mill to accept a loss contract.

On August 14, 1945, in pursuing its claim for relief, the mill was advised by the Washington Quartermaster Depot to file a legal addendum to its original petition, to establish its eligibility for relief under the First War Powers Act and subsequent regulations.

Such addendum was filed on September 24, 1945, and reviewed in both the Washington and New York quartermaster depots. Their findings are that the mill is entitled to and should receive relief.

On October 1, 1945, over the signature of Maj. Gen. C. L. Corbin, Quartermaster General, the mill received a letter including the following:

"A definite policy has been established that no relief can be given by the War Department under the First War Powers Act, notwithstanding the merits or equities involved, unless the contractor in question is one whose continued operations as an efficient source of supply is important to the war effort."

On October 2, 1945, Col. Park Holland, Chairman of the Army's Advisory Board on Request for Relief, told the mill that its only method of securing relief was, either: (a) A favorable decision from the Comptroller General's office; or, (b) speeial legislation by Congress.

The Comptroller General will give no relief. On April 7, 1945, he issued Regulation B–48339, as follows:

"This Office consistently has held that the provisions of the First War Powers Act have no application to a contract which has been fully completed—that is to say, where the work has been performed and final payment made therefor. The basis for such holding is that after completion there ceases to exist a contract upon which the provisions of the act and Executive orders issued pursuant thereto legally can operate."

It is obvious that the only method by which relief can be obtained is for Congress to pass legislation to the effect that: Contractors actually aiding in the facilitation of the prosecution of war shall have equitable rectification for inequitable losses sustained under war contracts, regardless of the time contract was completed, or final payment made, or contractor's further connection with the war effort.

Due to the loss incurred, the mill's finances are severely jeopardized and its continuation is problematical. All its physical assets are mortgaged; its inventories are under trust receipt; and its accounts receivable are pledged for working capital. A composition of creditors was necessary and a town meeting enlisting cooperation was held.

A shut-down of the mill would eliminate it from producing a much-needed commodity during the reconversion period and affect public interest to the extent that Hanover, Ill., could easily suffer dislocation and become a "ghost town."

Now, Mr. Chairman, this is not the only case where officers in the field, maybe they did not have the authority to do what in many cases was done, but here is a case where the fellow follows it all the way through to the Quartermaster Department in Washington, D. C., and is advised and told to go ahead and complete the contract and file his petition for relief there. After and when he does then he is advised that he will have no relief under the War Powers Act.

Mr. Chairman, that concludes the case that I want to present on behalf of the Hanover Woolen Mill Co., and then there is one other one, and then I will be through.

I presume this is only just a small amount of the tremendous number of cases that there must be throughout the United States of America, where there are unusually large amounts involved. It strikes me that unless these people do get relief a great number of them are going into bankruptcy if they have not already gone in before they get the relief.

Now, the third case, Mr. Chairman, that I want to present for the consideration of the committee is the Enjay Construction Co., Inc., located in Chicago, Ill., at 160 North La Salle Street. Are any representatives of that company here today? I see that there are.

I will present this just briefly; the members are here, and if there are any questions or any further statements that you gentlemen want to make after I get through, you can so testify.

Enjay Construction Co. had a contract for the hospital section at Camp Ellis, Ill. This camp happens to be, Mr. Chairman, just 14 miles across from my home city of Havana. The Government, by contract with a third party, undertook to provide all contractors on the project with roads—a uniform road system. The roads were to be done by November of 1942. Enjay had to have the roads to fulfill its contract. Roads were not provided until the job was about done. All through the winter months the project was without proper roads. The ground digging which Enjay could have done before cold weather

had to be done in freezing conditions. At one time 30 of the company's trucks were mired. Trucking costs were themselves $150,000 extra because of no roads. Total extra costs due to the Government failure to provide the roads was $462,000. The job was completed in the summer of 1943. The claim has been pending since then.

The CHAIRMAN. Were the roads in contemplation when the contract was entered into?

Senator LUCAS. That is right; the roads were to be built by somebody, before Enjay was supposed to go in there, and when he did go in there with the contract the roads were not constructed; and the result was, he went in there under difficult conditions.

The Army engineers have agreed that payments should be made; by 1944, August, a contract agreement was signed between Enjay and the Army giving Enjay the amount owed to Enjay subcontractors of $215,000. The claim went up on an Army ruling allowing such claims. The Army reversed the ruling and suggested the case be brought up on another theory, important to the war effort. This also was agreed to by the Army engineers along the line, and the Chief of Army Engineers directed the Director of Purchases to pay the amount, and this was the third time the Chief of Engineers made the recommendation to the Director of Purchases. This was in the office of the Director of Purchases.

The war hostilities ended, and the War Department said that they could not pay, because now it was not important to the war effort. In other words, after agreeing all the time to pay the contractor, then, because the war terminated, they said under the War Powers Act they have no power to make this final agreement.

Now, I cannot understand just exactly why the War Department is objecting to this bill. It may be that they are not objecting to the theory; I cannot see how they can object to the payment of these claims if they are just, and it may be some language or something else that they are objecting to, that I have not examined.

Two years now, Mr. Chairman, was spent on an admittedly valid claim and refusal, and the claim was for subcontractors only. The company still owes $157,500 to banks on this deal, to be repaid out of future earnings. The Enjay company previously completed its part of the Lincoln ordnance work with complete control of contract and roads, and this is the only job out of 19 under way in the Sixth Corps Area to be not completed on schedule. In other words, I merely mention that to show you that the Enjay people are a responsible group when they put up the Lincoln ordnance plant, which is a tremendous thing; and, having had the roads built for them in advance as per the original agreement, they went through with the contract upon the scheduled time.

Now, Mr. Chairman and members of the committee, I think this is one of the most important pieces of legislation that is before the Congress at this time, where relief is involved. We all talk about legislation being important, and of course it is, and now I am talking primarily about where contractors are applying for relief in one form or another. It strikes me that if there was ever a time when the ends of justice should prevail, it is through legislation of this type.

Now I am not going to clamor about whether this language is correct or incorrect. I have taken it up with the legislative counsel of the Senate, and there are pretty good lawyers in there as you all know,

and I have had the Navy's opinion, rendered here, taken up with the legislative counsel, and they advise me that under the wording of this bill they cannot see why the Navy has the objection that it does claim. I draw your attention, Senator, to the fact that the Army does not specifically object to the bill but suggests amendments, and they say if the amendments were adopted they would have no objection.

Senator LUCAS. The amendments that the Army sent me would absolutely, in my opinion practically leave the bill right where it is, as far as the War Powers Act is concerned.

The CHAIRMAN. I think it might be well for you at your leisure to examine those suggested amendments.

Senator LUCAS. I would be glad to advise the committee later on those amendments; but I do hope, Mr. Chairman, that the committee will act favorably upon this legislation, and it be reported out as soon as possible, because a great number of these people who are asking for relief and will ask for relief under this bill have suffered an irrepable loss as a result of delay in action: and, of course, there is nothing that they could do if the Army took the position that they could not pay under the War Powers Act. But the strange thing is, the Navy does takes the position, and have taken the position, that they could pay, and have been paying, these claims under the act, and the War Department does not. Maybe that is another reason for merger; I do not know.

(Memorandum filed by Senator Lucas:)

VIEWS OF SENATOR LUCAS ON SUGGESTED WAR DEPARTMENT AMENDMENTS TO S. 1477, SUBMITTED AT THE REQUEST OF THE CHAIRMAN

1. The War Department in its letter of March 18 says that S. 1477 "will afford an expeditious method of granting relief for nearly all of suggested cases" coming within purview of S. 1477, but they suggest modifying provisos as follows: "*Provided*, That action taken pursuant to this section shall be confined to cases where the operative facts giving rise to the petition of the contractor occurred between December 7, 1941, and August 14, 1945: *Provided further*, That this section shall not be applicable to contracts which have been terminated and final settlement agreement executed, whether or not such settlement agreements have been reopened pursuant to section 6c of the Contract Settlement Act of 1944: *Provided further*, That no completed contract shall be amended or modified after final payment except in those cases where a written petition for relief was filed by the contractor with the Department or Agency prior to final payment: *Provided*, That this section shall not be applicable to cases where requests for amendments or modifications were submitted under section 201 of the First War Powers Act, 1941, and were considered and finally disposed of under such section upon their merits prior to August 14, 1945."

2. The first proviso is already substantially included in S. 1477, and I believe that the difference is merely one of language. I quote: "*Provided*, That action taken pursuant to this section shall be confined to cases where such supplies or services have been so furnished between December 7, 1941, and August 14, 1945."

I do not see any substantial difference between these two wordings, though the phrase "operative facts" in the Army's wording does not seem to me as precise as the wording in the bill.

3. The last proviso suggested is also included, substantially, in S. 1477, as follows: "*Provided further*, That this section shall not be applicable to cases submitted under section 201 of the First War Powers Act, 1941, which have been finally disposed of under such section upon their merits prior to August 14, 1945."

The object here being not to open up old cases already equitably settled.

4. The second proviso suggested seems to me to be entirely unnecessary. S. 1477 itself gives the Department power to consider action only when necessary "to prevent manifest injustice." Contracts to which the suggested Army

proviso would apply could be equitably disposed of under the general provisions of the bill.

5. The third proviso by the War Department is not well taken, to my mind, because it might cut out contractors with strong equitable claims but who have not pressed claims since VJ-day because, under rulings of the Army, claims would not be paid anyway. To my mind it would be unfair to the contractor whose claim would have been good prior to VJ-day, to cut him out simply because he has not filed any protest to the Army policy.

6. *Conclusion.*—To my mind, two of the War Department suggestions are already included in the bill. The other provisos seek to accomplish something which may be accomplished under S. 1477 without amendment, namely, the elimination of unworthy claims. I can think of no claim which the Army or any other department could not eliminate under the bill as it stands. In fact, it would be the department's duty to eliminate claims which show no manifest injustice.

I feel the provisos are unnecessary and should not be added.

Respectfully,

SCOTT W. LUCAS.

Senator REVERCOMB. As I see the underlying theory of this proposed legislation, it is to get relief for persons who have been caused loss under contracts with the Government.

Senator LUCAS. That is right.

Senator REVERCOMB. Now, the proposed bill, S. 1477, authorizes the President to empower agencies to make contracts and amend contracts, which I take it to be contracts for settlements of these matters.

Senator LUCAS. That is right.

Senator REVERCOMB. Do you think that is a better method than legislation that could be passed empowering these people who had losses—these contractors—to go into a court, a Federal court, and prove their claims and their losses, under established rules of evidence?

I just ask the question.

Senator LUCAS. My notion is, Senator, that if we get through legislation of this type we are going to get quicker action on claims of this kind than we would if we went into court.

In other words, there is very little controversy about a lot of these claims, and there are some claims where there is a controversy, but I read a couple of them here where they all agreed. For instance, a certain amount was due; but because hostilities ceased, they could not pay.

Now, all I am trying to do is "to continue the war" for these fellows so that they can get their money, because they have rendered valuable service in the successful prosecution of the war, and they have done a lot of things in their industry that they would not have done had it not been a war effort.

For instance, there is the woolen mills proposition, where they practically took the contract knowing that they were going to have a loss, with an understanding by officers that "you file your claim later on and get relief." Now, a businessman would not do that if he was not in a position where he had to go under war conditions—do you not see?—and that is one case where there might be a controversy about it.

However, there are a number of cases throughout the country where the question of damages, or the amount that is due and owing on the contract, is agreed upon by practically everyone; and yet, because of some little detail of some $25,000 or $50,000 that they do not agree upon, they did not settle the first part of it, and so now they are in a position where they cannot settle any of it.

The CHAIRMAN. There seems to be a divergence of opinion between the two Departments. As I gather from their letters, the War Department says that they cannot settle under the War Powers Act, and the Navy says that they can settle under the Contract Settlement Act.

Senator LUCAS. I have not gone into it thoroughly, and no doubt the Navy and the Army have, because they have their experts down there; but I know, Mr. Chairman, that this is a meritorious piece of legislation, and I just know enough about these petitions and this case to know that these gentlemen are entitled to relief some place along the line.

The CHAIRMAN. It seems, between the divergence of opinions, those who furnished material for the war effort are being squeezed.

STATEMENT BY MRS. A. S. MUSGRAVE, ATTORNEY

Miss MUSGRAVE. My name is A. S. Musgrave. I happen to be an attorney in Washington, and I wrote the letter to you concerning the Wullschleger Co.'s situation. I wish to ask the Senator—he stated that the particular reason given by the War Department for nonpayment was that the war had ceased—did he know that the War Department also was giving a reason to a claim which they acknowledged to be fair, that they were not permitted under this section 201 or Executive Order 9001 to give relief in a just claim where the work was performed during the period which is covered here, because the operation had ceased?

In other words, this Wullschleger Co. was set forth in the letter which was explained—and I am very sorry that it did not come sufficiently to Senator Lucas's attention, because I believe that he would have felt that it was one of the broadest cases that could come before you—of a man who converted his small lumber plant to make gunstocks; and because he was not able to receive the same sort of help that the larger plants received—that is, examination or inspection at the source—he lost not only his mill but everything that he had, which he had pledged to get the Government loan. So they came in and closed down on him, and he performed his contract to make the gunstock blanks, and he lost his mill, and he lost everything which he and his wife ever had, which they had pledged for the loan, and he came out, the bank taking everything, and he also had a deficiency.

His claim, of course, was a perfectly legitimate claim, but the Army wrote a very nice letter in which they say that they are very sorry that they cannot take favorable action, that they cannot do it because his operation has closed.

Senator REVERCOMB. You mean that his plant had closed or the contract had been finished?

Miss MUSGRAVE. He is bankrupt, and he can do no more work, and they cannot consider his claim because, under 201, they are strictly limited to the matters which will aid the war effort; and because they are strictly limited under 201 to what will aid the war effort, they have brought in these statements, which I assume are perfectly true, the War Department is sincere about it, that, being so limited, they are unable to grant this man relief even though they recognize a very valuable and equitable claim, because it has been interpreted that when he has gone bankrupt on account of his contract and can no longer manufac-

ture because they have taken everything, they cannot give him the relief because it would not aid the war effort now that he is closed out.

That is the same way they say now that the war is over, but this, of course, is not only what Senator Lucas said, but it goes three times further, and I wonder if this had been brought to his attention.

Senator LUCAS. No; but I rather think that the language that I have in the amendment will cover that.

The CHAIRMAN. I imagine there will be a number of cases that have not been brought to the attention of anybody. This is broad legislation.

STATEMENT OF HON. THOMAS J. LANE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. LANE. I am Congressman Thomas J. Lane, of Massachusetts, and I am going to leave the presentation to Mr. Gaunt, of the Merrimac Mills, of Methuen, Mass., who has been affected as a result of this problem.

The CHAIRMAN. Are there any other members of Congress here? I regret that I sometimes do not see them when they come in.

All right, we will proceed with Mr. Gaunt.

STATEMENT OF ALFRED C. GAUNT, PRESIDENT OF MERRIMAC MILLS, METHUEN, MASS.

Mr. GAUNT. That is certainly very kind, Mr. Chairman. This is very short, sir.

My name is Alfred C. Gaunt. I am the president of Merrimac Mills, a small worsted mill employing 200 people in Methuen, Mass.,

The presentation of S. 1477 to authorize relief in certain cases to correct manifest injustices to firms who have performed Government contracts is a ray of hope, especially to small concerns like ours which have incurred crippling penalties which seem unduly harsh in view of all the circumstances.

I should like to congratulate the sponsor of this bill for introducing it. I hope that its scope can and will embrace opportunity for relief to our concern.

A short summary of our case history may be helpful to you in your deliberations.

Under dates of September 10 and December 17, 1940, we obtained contracts from the United States Army quartermaster for a total of 200,000 yards of serge, against which we made total deliveries of 150,647 yards.

By reason of our inability to comply with delivery schedules, we were assessed $34,730.53, which was withheld from remittances due us.

The reason for our delayed delivery was due to labor troubles, which were caused principally by some "lost motion" in a loan we had from the RFC.

To finance this order, we borrowed from the RFC and the Pilgrim Trust Co. $150,000, understanding that it was to be a "revolving credit." Early in December 1940, and when we were getting nicely swinging on the order, we had used up the $150,000. That is for pay roll. Money, nevertheless, had started to come in from the quartermaster.

Instead of this incoming money being made available to us for continued operation, it was applied against the face of the note; and it took us nearly two months of negotiations with the RFC before the funds were released on a "revolving basis."

We had obtained a full complement of help and were running night and day. When the work began to run out due to our lack of finance, our help left us and went to work at other mills, who at that time were eagerly seeking employees. Our entire organization was disrupted; and when we started again we had to take just what help was left.

The employees we obtained were largely inexperienced and we had several minor strikes and stoppages which further delayed production.

We feel that relief should be granted us for several reasons, among them the following:

1. The policy of assessment of "liquidated damages" as pursued at the time was inequitable and has since been discontinued by the quartermaster depot.

2. Although the "lost motion" arising from the money situation was a prime cause of our delay, and although the quartermaster depot had no control over it, the difficult situation arose from dealings with another branch of the Government—the R. F. C.

3. The labor difficulties were something over which we had no control.

4. War Powers Act No. 1 subsequently passed outlined that relief and restitution could be made under certain circumstances, but we were unable to obtain relief thereunder. We have exhausted every means and outside of something that this committee is proposing, there seems to be no avenue open to us. The contracts were taken at no margin of profit. As Senator Lucas said, we did not know our costs too well when we started on the war work because we were a small concern. In fact, we suffered a manufacturing loss from them, and the assessment of $34,730.63 worked such severe hardship upon us that only by recourse to a money lender whose rates were 24 percent per annum were we able to obtain finances to continue in business. We were hanging on the ropes and we had to do that or else fold up.

Although we may have been technically at fault at some stage of these procedures or arrangements, it is hard for us to see where there was any justification for such a severe penalty. Our soldiers did not suffer from lack of uniforms. The war effort was not impeded. The delays were caused by difficulties and time lost in unwinding Government red tape.

Applications for relief through the usual procedures seemed to have been fruitless; and it appears that only through channels of a Committee like yours can we hope to receive that relief which to us would seem to be only fair and equitable.

Our trouble originated in 1940 and I should like to suggest, in order to cover similar cases to ours, that it might be necessary to make line 8, page 2, read January 1, 1940, instead of December 7, 1941. You will remember that it was in 1940 that we became involved in the preparations which we called the War Effort. That was sometime prior to Pearl Harbor days. Thank you.

The CHAIRMAN. Are there any questions?

Senator REVERCOMB. I did not hear Mr Gaunt's point but I would like to ask a question on this.

Would you have this apply where receipt has been given for full settlement?

Mr. GAUNT. Would we have the supply, you mean?

Senator REVERCOMB. No; would you have the law apply for additional remunerations where a receipt had been taken by the Government from the contractor accepting payment in full?

Mr. GAUNT. It seems to me that I would, Senator.

Senator REVERCOMB. Would you do it in those cases where that receipt had not been given under protest?

Mr. GAUNT. It seems so if there is an inequity that exists.

Senator REVERCOMB. An inequity discovered after the giving of the receipt?

Mr. GAUNT. Yes; discovered after the giving of the receipt or it may be that we would not have made a formal protest at the time we signed the formal papers.

Senator REVERCOMB. That is all.

The CHAIRMAN. Thank you very much, Mr. Gaunt.

We will have to hurry along. Is Mr. Weitzel from the General Accounting Office here?

Mr. WEITZEL. Yes, sir, Mr. Chairman.

The CHAIRMAN. You may proceed.

STATEMENT OF FRANK H. WEITZEL, REPRESENTING THE GENERAL ACCOUNTING OFFICE

Mr. WEITZEL. Mr. Chairman and members of the committee, I appreciate very much the opportunity that has been afforded me to appear before your committee today in respect to the provisions of S. 1477. The General Accounting Office has not been requested to furnish a report on S. 1477, and I have no detailed prepared statement, not having had time since the notice reached me this morning of the hearing.

There are a few general observations which the Acting Comptroller General, Mr. Yates, wished to have brought to the attention of the committee in the event that it decides to take any action on the bill. In the first place, the language of the bill authorizing regulations of the President in turn to authorize the Departments to enter into contracts and into amendments or modifications of contracts without regard to the provisions of law in such matters appears broader than necessary to accomplish the apparent objective of the bill.

I believe the Senator made that same observation just a moment ago, Senator Revercomb. Obviously, this language is taken from the First War Powers Act, section 201, but the fighting of the war at least is over now, and it is a question whether it is necessary to delegate all of this authority now to the President and to the heads of departments. All that apparently would be necessary to afford relief would be to grant authority to amend contracts so as to increase the price paid or to be payable thereunder.

Then, with respect to this delegation and redelegation, this would result in the departments, the numerous departments which have been granted authority to amend contracts in the past under the First War Powers Act, amending contracts which had been made by them after the performance had been completed or the contract had been thrown

up or been declared in default, and it would be extremely difficult to keep the various departments in line in administering this authority so that each department would use the same standards and same rules in deciding what would be the claim which should be granted relief.

I realize there is a standard in the bill as to when a department should grant relief. That is that such action is necessary to prevent a manifest injustice.

Now, to use this term is very vague and indefinite. It would be difficult to interpret the term in writing regulations for the President, or in administering the provisions of the bill in the various departments. Then we see some danger in having the departments, the contracting officers, get together with the claimants and amending the contracts, apparently without any review on the part of any independent body, and there would be an opportunity for at least, we might say, discriminatory treatment as between the various contractors who had gone along with the contracting officer of the department, such contractors as those could conceivably get a little better treatment than those who did no get along so well with them.

In other words, we feel the administration of the bill, if left in its present form, would be not at all uniform among the various departments. It might get out of hand, we feel, in some departments.

The CHAIRMAN. What do you mean by getting out of hand?

Mr. WEITZEL. That is that the standard, that the relief is necessary to prevent a manifest injustice, is so broad and susceptible of so many different interpretations, varying all the way from law through equity down to natural justice, that each department would be inclined to administer it more or less in accordance with its own ideas, and it would be rather difficult for the President, in writing regulations under such a broad grant of authority, to limit the determination of any department.

The CHAIRMAN. That is to write the rules of equity that would apply, is that right?

Mr. WEITZEL. Absolutely, Senator. It is broader than equity the way it is written here.

Senator REVERCOMB. Is this not a claim based upon actual loss without the fault of the contractor?

Mr. WEITZEL. That is the way it looks to us, and I am coming to that in just a moment, if we could change the approach, if the committee desires to consider the bill favorably, whether they could change the approach to the problem so as to do justice without doing it in this way, which is somewhat complicated and outmoded now that the war is over, and unnecessary.

The CHAIRMAN. As regards "unnecessary," I do not think that you mean it may be in just that sense. The presentation so far made impresses me very, very much, that some legislation of this type is necessary. The legislation that we have before us in its present verbiage may not be that which is essential, but something is essential to bring about a measure of justice here.

Mr. WEITZEL. I am addressing my remarks to the provisions of the bill and the procedure in the bill, and I would consider that that seems unnecessary in the present circumstances.

Now, of course, it is the province of the committee to decide whether relief in general is necessary.

Senator REVERCOMB. You are speaking more to the question of administration, as I see it.

Mr. WEITZEL. At the present moment, Senator.

Senator REVERCOMB. Go ahead and finish, and then I want to ask you several questions.

Mr. WEITZEL. I would question whether in one or two of the situations presented by Senator Lucas, the relief would be forthcoming if this bill should be enacted. There was some dispute in the War Department in the case of the Hanover Woolen Co., and even when they had the opportunity to grant relief under the First War Powers Act, the Department decided not to grant that relief. And I would not say, and I do not think anyone could say that the Department necessarily would grant relief in a case of that sort, even under this bill.

As to the case of the Lake States Engineering Co., that is a construction contract, apparently, and the language of this bill says that the injustice must be to a firm, corporation or individual who has furnished supplies or services for the Government. In this respect, the language might not be broad enough to cover certain cases such as these construction contracts. I think the third case he mentioned, also, was a construction contract, which might be just as meritorious as those reached by the present language of the bill.

If it is the intent to cover such contracts as construction contracts, the language should be clarified.

Then, the provisions of the bill are not to be applicable to cases finally disposed of on their merits under section 201 of the First War Powers Act prior to August 14, 1945. This provision would seem to exclude many cases which presumably, if they had any merit, were determined prior to that date, and might leave rather a small area upon which the bill could operate. However, there is a question as to the meaning of the language "when finally disposed of."

In that connection, I think we might call attention to the fact that the First War Powers Act was not enacted as an aid to contractors. It was enacted as an aid to the prosecution of the war, and I noted with interest that the War Department had taken the position that the relief granted must be essential to the prosecution of the war.

In other words, if paying more under a contract to a contractor who had no further contracts with the Government were requested, the Department would feel that that was not an aid to the prosecution of the war. So, of course, this provision that you now have is much broader, in that the same action can now be taken if necessary to prevent a manifest injustice.

The CHAIRMAN. That is an injustice to one who was called in to render a certain measure of service in furtherance of the war effort?

Mr. WEITZEL. Yes, Senator.

Senator REVERCOMB. May I interrupt there to say that I would not want to limit this in furtherance of the war, if the Government went into a contract under authority of law, and through no fault of the contractor he lost money, whether in furtherance of the war effort or peace effort, does not the same principle apply, of right?

If you hang it upon the question of furtherance of the war, you have put into it another element that may be difficult to prove.

Mr. WEITZEL. I think, too, if you give effect to the provisions of this bill, you will exclude many cases which might be thought meritorious by the contractors, but which were decided adversely to the contractors for this very reason, that the department thought that action would not be in furtherance of the war effort. Even though it might help the contractor and pull him out of bankruptcy, if it was not in furtherance of the war effort, the relief would not have been granted and it could not be granted under this bill.

Senator REVERCOMB. Where is the justice in making a distinction in a contract on the ground it is in furtherance of the war effort, if it is a contract entered into in a bona fide way?

Mr. WEITZEL. I am not sure that there should be a distinction. I think that there was a distinction during the war because of the fact that the contractor, if kept in business and furnishing material to the Government, could help the war effort. That was the approach under the First War Powers Act. That may not be the intended approach under this bill, but the language of the bill has that limitation, that if a case was settled under the First War Powers Act, it could not be reopened now.

Aside from the language of the bill, too, there is a larger question as to the approach to the problem, as I suggested a few minutes ago; while I am not prepared at this time to commit the General Accounting Office finally upon this phase of the problem, we do not feel that there have arisen sufficient cases of the character covered by this bill to authorize opening the floodgates to any and all claims which may be presented by disappointed contractors.

The authority proposed to be granted by the bill would extend to numerous departments and agencies of the Government, and it may be felt by the committee that a better approach would be to authorize the presentation of claims for losses to a designated agency or tribunal for settlement upon an equitable basis, and Senator, that need not be limited to claims for losses incurred in furtherance of the war effort; that would be a question of policy for the committee to decide upon. The primary thing, though, is that a specific tribunal such as the Court of Claims would be given the authority in the legislation to hear and pass upon equitable claims of contractors for losses incurred during the war period on contracts with the Government.

Senator REVERCOMB. That is the question that I wanted to ask. Would not the contractor be in a better position, and would not the Government be in a sounder position, if these claims were presented under an enabling act or an act of the Congress, to a court of claims where the procedure and the principles and the basis of what a manifest injustice might be, would that not be preferable to all parties concerned, rather than have several agencies each determining for itself what is manifestly an injustice?

Mr. WEITZEL. I believe it would result in a more uniform administration of the act and perhaps in the long run in a fairer administration of the act. That is from the standpoint of the contractors and of the Government.

Senator REVERCOMB. One contractor may come before an agency that would lay down a very lenient rule as to a manifest injustice, and what it deemed to be manifest injustice, whereas another agency might be

rather tough on the subject, and deny relief that another contractor could get from another agency. Could that not happen?

Mr. WEITZEL. I believe that could happen.

The CHAIRMAN. There is only one thought in reference to that phase of the subject, and that is, my knowledge of the magnitude of the work now on hand with the Court of Claims, and those who might have a claim to file under the late lamented war, if I may so term it, might be long since gone when they would get a decision on it.

That is the only thing that I have in mind, but, Senator, I, aside from that, do agree with you very much, and I wonder if something could not be done to set up a special court to deal with claims growing out of this line of work in this late war.

Senator REVERCOMB. I am not taking position on this. I am simply trying to be advised on this and consider it, and your thought of a special tribunal to do this appeals to me.

The CHAIRMAN. Very well, excuse us for interrupting.

Mr. WEITZEL. Certainly, it is very helpful and valuable.

The CHAIRMAN. So far your criticism has been exceedingly helpful to me.

Mr. WEITZEL. Thank you, Senator.

This legislation could provide, also, for treating the whole war period and all of the Government contracts held by a contractor, during that period, as an entity for the purpose of determining whether a contractor is entitled to increased payments. This would be somewhat in line with the procedure under the Renegotiation Act.

For example, a contractor might incur a $100,000 loss on one contract, but that might be an experimental contract in the early period of the war, and he might have made that up many times during the later part of the war. We feel that it might be well to take that into consideration. This would prevent payment to a contractor in one case where large profits have been made during the war generally by the contractor on Government contracts.

Also, the legislation in its present form does not take account of what may have been done under the Renegotiation Act, or under the Contract Settlement Act. There are other safeguards which we might suggest, but if the provisions with respect to entering into contracts should be removed from the bill, that would remove the necessity for some of these safeguards which were included in the original War Powers Act, such as the prohibition against the cost-plus a percentage of cost form of contract. I do not really believe that the bill intended that any new contracts would be entered into, that is, the intention was the contracts should be in the nature of settlement contracts, so that I think it could be improved in that respect.

If the committee wishes, the General Accounting Office will be glad to study this bill more intensively and furnish the committee a report or assign someone to cooperate with your staff in drafting any amendments which you may think desirable to clarify the legislation, to improve it or to safeguard the interests of the Government.

The CHAIRMAN. Thank you very much. We hope that you may see fit to sit with us during this hearing and listen to all of this so that at the end you may have some further comments to make.

Mr. WEITZEL. Thank you, Mr. Chairman.

The CHAIRMAN. I think it might be well to hear from some of the other gentlemen here.

Mr. SEVERINGHAUS. My name is M. J. Severinghaus, president of the Hanover Woolen Mills.

The CHAIRMAN. Will you kindly go ahead.

STATEMENT OF M. J. SEVERINGHAUS, PRESIDENT OF THE HANOVER WOOLEN MILLS CO., ILLINOIS

Mr. SEVERINGHAUS. I would like to comment on some of the things said here. My comment to Senator Revercomb is this:

A number of these corporations, including ourselves, if we would have to go to the expense of fighting litigation in the courts and if we would have to wait for the time involved in going through the Court of Claims or probably even the time involved in going before a special court, our corporations, and maybe ourselves, would not be here to see that equity was won.

Senator REVERCOMB. Do you think that that would apply in the case of a special court, tribunal, or board to handle all of these cases?

Mr. SEVERINGHAUS. It might. This is my eleventh trip to Washington on this case, three to New York, two to Philadelphia. We have never had a controversy with the Army, with whom we contracted, in regard to the merits or the money involved in the case. It has only been because the Army has taken two different positions, as to why they could not give relief, not due to the merits of the case or the loss that we suffered or how the contract was taken, but because they did not feel that they were empowered to give relief under the First War Powers Act.

I believe that the Army does feel that cases such as ours where all that we are asking for is the relief of a definite loss based upon an accounting made by the Army's own accountants of our costs records and books, to show what that loss was, that the Army would give us that decision.

Senator REVERCOMB. You are ready to accept the Army's accounting on that?

Mr. SEVERINGHAUS. Yes, sir.

Senator REVERCOMB. That is what you will find yourself in, if every contractor deals with the agency with whom he contracted, in settling for an additional amount, and I can readily understand why they would do that because they have to protect themselves.

Mr. SEVERINGHAUS. That is correct.

Senator REVERCOMB. I do not know that you would have greater delay with a special board that would be uniform in granting this relief to all contractors, any more delay than you would have with the agencies with whom you contracted.

Mr. SEVERINGHAUS. I think, Senator, we would. For instance, here is our first application filed at the suggestion of the Army, and then to get away from the point of the Army being empowered under the First War Powers Act to grant the relief, and at the Army's suggestion, we had a brief prepared by the counsel on renegotiations at Northwestern University, and there is the addendum to our original application, and those involved months of work.

Here we are, we are a woolen mill, in a town of some 1,600 people, the only industry in the town and the only support for public interest in that town. We have been operating there since 1864.

In June of 1940, before we ever got into the war, we devoted our facilities at the request of the Army to making Army cloth. We made that from 1940 until 10 days after VJ-day, over 5 years. We made on the Army contracts from June of 1940 until April 1943, a little less than 2 percent on the sale price of the goods.

In April 1943 the freeze order on wool was put into effect, known as Order No. 73. M. R. O. was in effect. We were in the position if we did not take an Army contract, we could not get wool for producing civilian goods such as I am wearing here, which is our main line, and we could not get an M. R. O. rating for securing replacements of equipment, and so forth, and the only contract that the Army had to let at that time was for a 32-ounce Melton wool for lend-lease in Russia, a very heavy wool piece. Our equipment was not designed for the manufacture of that heavy material, but it was the only contract available, and consequently if we did not accept it, we would have to close down, and there would be no industry or support for the town and, of course, the company would go broke.

We put in a bid for this of $3.31 a yard, knowing that we were not equipped for it, and we would have to make changes in equipment and knowing that there would be risks and unforeseen contingencies. The Army, through the quartermaster, said, "We cannot give you more than $2.95 a yard." We bid $3.31. There is a difference of 36 cents. We took a three-quarter of a million dollar contract at that $2.95 hoping and praying that some way something could come about that we could work it out, and after we got in production some 4 months, we found that we were losing our shirts, you might say, and we went to Captain Bumann at the Philadelphia quartermaster and presented the case to him. He said, "We need this material. If you do not furnish it to us"—and I have it in our testimonials here, his letter—"field units will go into action not being fully equipped."

I then came to Washington and took it up with Major Bagnell in the Quartermaster Corps here, and Major Bagnell said, "Go ahead and get it out; it is the only thing we can do." And while sitting at his desk, I wrote these notes, of which these are a photostat, from the attorney in the Quartermaster Corps, on the basis of which he told us to file our application for relief. So we went out and pledged our machinery, bought our wool on trust receipts, to raise money to carry over for that loss, and when we did, we filed that application for relief 3 to 4 months before we completed the contract. This is the application right here. That was before we completed the contract.

We felt we were going to get relief because all we wanted was on a cost basis. Then after we had finished the contract, one month after we had finished the contract, we received this letter from the Army, in which the say [reading]:

> It is with regret that you were advised that the conclusion reached is that under the facts and circumstances related, there is no authority under the terms and conditions of contract W669, or the procurement regulations to grant your relief. Consequently, the contracting officer has no other alternative but to deny your request.

We then took it up further with the Army. The Army then stated to us:

> Well here, why do you not write a brief on the First War Powers Act and show that you come within the purview of the Act?

So we engaged counsel. We wrote our brief, we prepared it and we filed it as an addendum to our original brief. Now, remember, the first brief was filed long before our contract was completed. We have never had a final adjudication of it, and it has never been gone through finally on its merits.

We brought this brief down here to Washington last September, I think it was Colonel Howe we took it up with here, and we were not given his opinion on it, but I think that he felt that we had a meritorious case and were entitled to relief, because he asked me to go to New York and present it to Captain Stone who had originally gone into it. I went up and spent 2 days in New York going before different Army review officers there. They told us we had a meritorious case, and they thought that it would be processed.

A few days after that, we got this letter. It is signed by General Corbin [reading]:

> It is regretted that in view of this policy, no further action can be taken on your application for relief.

And what is the policy?

> A definite policy has been established that no relief can be given by the War Department under the First War Powers Act, notwithstanding the equities of the merits involved, unless the contractor in question is one whose continued operation as an efficient source of supply is important to the war effort.

But as we are going through this year and a half of red-tape, VJ-day comes in on August 14, and then the Army is not empowered to give us relief because as they interpret the act, we are no longer necessary to the war effort.

An Army officer then, he is sitting in the room here, Colonel Holland said:

> The only way you can get relief is to go over to the Comptroller General or have legislation enacted.

So we hiked over to the Comptroller General and spent hours over there trying to find out where we are, and what do we find? We find that on April 7, 1945, the Comptroller General wrote this opinion [reading]:

> This office consistently has held that the provisions of the First War Powers Act have no application to a contract which has been fully completed, that is to say, where the work has been performed and final payment made therefor. The basis for such a holding is that after completion, there ceases to exist a contract upon which the provisions of the act and executive order legally can operate.

That is fine from an academic standpoint, but if you are operating a mill or a manufacturing plant and pay rolls staring you in the face, and you have got to get your bills paid, and you are not going to get material, are you going to withhold getting final payment when the Army says to you, "Go ahead; we need it to help win the war"? And you have to pay your interest on the money borrowed, so you are going to take your payments.

There was nothing said about hold back a dollar, and if you hold back a dollar, you have not gotten final payment, and by virtue of holding back that dollar, you come within the provisions of the act. We just did not know where we were, and there are a good many others in the same case.

Here in our particular case, we filed our application for relief long before the contract was completed, and we filed the application on the basis of the recommendations of the Army officers. We then got a

letter that they could not give it to us. They then advised us to file an addendum, and we filed the addendum. The time always went on, and it was two weeks after VJ-day, and then the Army's attorneys advised them that they could not give us any relief or consider the case, due to the fact that we were no longer necessary to the war, the war effort.

Now, if this goes into a lot more red tape and much more time, and goes on before these contractors who have suffered inequities, and particularly in a case like ours where we had to close our mill or take a contract at the price that the Army dictated and not at our bid, that is the case.

We took four more contracts after this was completed, from the Army, and worked until ten days after VJ-day, and these contracts, the four that we took, were for a 20-ounce woolen cloth, the contract in question is for a 32-ounce woolen cloth. But these four new contracts were taken subject to the Army's redetermination as to the price that we should get.

When we had completed those contracts, the Army allowed us, after their bookkeepers and accountants had spent 6 weeks at our books, they allowed us $3.17½ a yard for 20-ounce cloth, and on the contract in question allowed us $2.95 for 32-ounce cloth, which required 60 percent more material.

Senator Revercomb. Let me inquire there. There was no redetermination of price clause in your first contract?

Mr. Severinghaus. No, sir.

Senator Revercomb. Was that redetermination of price clause in contracts a new practice that grew up in the making of contracts after the making of your first contract?

Mr. Severinghaus. It was in our case. The first contract had no provisions on it, but the subsequent contracts did. In fact, on the four succeeding contracts we had that.

Senator Revercomb. I am wondering why it did not get into the first contract?

Mr. Severinghaus. I think, as I understand it, the Army terms that as an escalator clause in the contract. Some contracts had them and some did not have them. Whether one theory was subsequent to the other or not, or whether it was just some contracts had it, I cannot answer.

Senator Revercomb. It is a very just clause, I feel.

Mr. Severinghaus. Here, Senator, in considering these cases, remember we are not working under peacetime operations at that time. Everybody was trying to contribute to the war effort, we all had our relatives and children in the war. We were trying to do our bit and here is a mill that gave its all, and in giving its all to the point where it had to pledge its assets, mortgage its equipment, chattels, and land, go ahead and buy its material on trust receipts and sell its accounts receivable, placed its all in the lap of the Government and said, "Here, we will do that because you have told us that if we filed an application, we will have an equitable hearing." They did not say they woud give us the money, they said they would give us an equitable hearing.

We have never had that, although we filed our complete account and work on it, which took 2 months to perpare. The Army has never felt it has been in a position where they could consider the case.

We are paying interest on the borrowings due to the $97,000 that the Government owes us. On the other hand, on these four subsequent contracts, where we bid altogether $15,000 higher than what the renegotiation said that should be, the Government says to us, "You have to pay that $15,000 back right away." So we had to pay the $15,000 back right away, but still we are owed the $97,000.

The gentlemen who spoke from the Comptroller General's Office said that there is a controversy on the Hanover case. There is none. The controversy has been over whether the Army has the power to proceed under the First War Powers Act.

Now, our attorneys, and we had some good ones, do not agree with the Army. And as we understand the Navy's position, the Navy does not agree with the Army. The Navy's objection was that if this was passed, then probably the contracts that they had given equity to since VJ-day might have been done legally, or something. That may have been the point, but at least they are diametrically opposed. But our attorneys said that the Army did have the power.

Now, it is on account of that disagreement that the poor contractor and his employees are caught in the middle. And it is the purpose of this legislation, as I see it, to rectify that.

The CHAIRMAN. You listened to the representative of the Comptroller General's office here and his comments on the effect of the language of the bill; without committing you in any way, I want to say to you that some of his comments struck me forcibly. In other words, that the very thing that we are seeking to do by this bill might not be done by reason of certain language of the bill.

Mr. SEVERINGHAUS. You might be entirely correct, and he might be entirely correct on that. The only point I am bringing up on it is if we get involved in much more red tape, there are a good many of these contractors who have gone to the wall because this equity has been delayed so long. There will be more going to the wall if it does not come about soon.

As far as our case is concerned, the Army knows the case from beginning to end, and we have gone through it so often with them and spent so much time with them, we feel that they would be fair and it would be perfectly willing to leave ours in their hands, if they felt that they had the power to give it.

Senator REVERCOMB. Have you studied the provisions of this proposed bill?

Mr. SEVERINGHAUS. Yes, sir.

Senator REVERCOMB. Are you satisfied with the definite language in the bill, that such action is necessary to prevent a manifest injustice, or would you think it would be better to write in there, "to pay and settle," and I cannot give the exact language, "to pay and settle the losses actually incurred by the contractor, without his fault"?

Mr. SEVERINGHAUS. Yes, sir. Whether "manifest injustice" or not, that is the language, all that we are after is that equity be done where equity should be done, whatever the language is makes no difference whatsoever.

Senator REVERCOMB. It would make a great deal of difference in administration.

Mr. SEVERINGHAUS. That is true. Now, to corset this bill so that it is sufficiently restricted, so that it does not create so much latitude that

it is going to bring in a lot of cats and dogs that do not deserve consideration, that should be done, but in doing that it should not be done in such a way that injustice is done to any concern who gave their best and did honestly suffer a loss during this period, and we have offered the War Department to take whatever amount there is in here, and we will take that without even thinking of a property. But we do have to have that loss back, or you know what happens next.

Thank you very much.

The CHAIRMAN. Now, ladies and gentlemen, the roll has just been called, with the idea of calling the calendar. It is now 3:30. I would like to go on as much as possible, but we just have to go to the floor; I would be entirely content to go on with this tomorrow. I suppose some of you have come from some distance to be here, is that true?

Would going on tomorrow be of any assistance to you? We have to go to the floor, both Senator Revercomb and myself.

That is a more important subject than I thought when I first saw the bill, and if we could go over to 10:30 tomorrow morning, I do not want to bring you gentlemen back here, and I think that that is the only thing that I can do.

This matter will go over until 10:30 tomorrow morning, and we would like to have a representative of the General Accounting Office here, and a representative of the Army, and everyone else who is here, and we will be glad to have you here at 10:30 tomorrow morning.

(Thereupon, at 3:30 p. m. Friday, April 12, 1946, the committee adjourned, to reconvene at 10:30 a. m. Saturday, April 13, 1946.)

WAR CONTRACT HARDSHIP CLAIMS

SATURDAY, APRIL 13, 1946

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met at 10:30 a. m., pursuant to adjournment, the Honorable Pat McCarran (chairman) presiding.

The CHAIRMAN. The committee will come to order. Is Mr. B. H. Sullivan here?

STATEMENT OF B. H. SULLIVAN, ATTORNEY FOR ENJAY CONSTRUCTION CO., WASHINGTON, D. C.

Mr. SULLIVAN. I am an attorney located here in Washington, and I represent the Enjay Construction Co. Now, two of the officers of the Enjay Co. and one of their main subcontractors came here thinking they would only be here yesterday, so that instead of making any remarks that I might care to make at this time, in order to be sure that they get their testimony today in time to return today to Chicago, I would rather go over until later. I am in the Union Trust Building.

The CHAIRMAN. You practice by yourself?

Mr. SULLIVAN. Yes, sir.

The CHAIRMAN. Very well; who is here from your Enjay people?

Mr. SULLIVAN. Mr. N. J. Wagner is the president of the Enjay Construction Co.

The CHAIRMAN. Do you wish to be heard now, Mr. Wagner?

Mr. WAGNER. I do not want to take any time now, just as long as we get away today.

The CHAIRMAN. I will hear you right now.

STATEMENT OF N. J. WAGNER, PRESIDENT OF ENJAY CONSTRUCTION CO.

Mr. WAGNER. Referring to what the representative of the General Accounting Office said yesterday, with all good intentions, and also what Senator Revercomb had to say, I thought possibly that we might be muddying the water a little bit.

We have a War Powers Act, and the regulation of that act reads that relief is to be granted, paragraph 1250–1, to prevent unfairness to the contractor or to the Government. Paragraph 2 is to provide relief for unexpected difficulties by the contractor in performing the contract. Paragraph 1252–2 provides a liberal policy of granting amend-

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ments to contracts so it will assist the Government in obtaining close prices and reasonable cost estimates without excessive allowance in the price for contingencies against unforseen risks. 1252–2 provides to insure maximum cooperation and production, assuring contractors of fair treatment.

By this policy it is believed that the costs of the War Department procurement, as a whole, will be materially reduced and that efficiency or production will be materially increased.

The CHAIRMAN. What are you reading from?

Mr. WAGNER. From the regulations of the War Powers Act.

The CHAIRMAN. But not the War Powers Act itself?

Mr. WAGNER. The act says that relief is to be granted.

The CHAIRMAN. That last is not a part of the act?

Mr. WAGNER. No, that is the regulation, but the act does say that relief is to be granted in cases where continued existence of the contractor will help the prosecution of the war.

That is where our trouble comes. We have had our claim pending since the summer of 1943. The case has been reviewed and approved by the district engineer's office, the division engineer, the Chief of U. S. Engineers on three different occasions.

The CHAIRMAN. If I recall yesterday's testimony, yours is a claim for damages growing out of the failure of the War Department or the Government to have proper roads for the delivery of commodities.

Mr. WAGNER. It is not only roads, Mr. Chairman, but it also has to do with the grading of the area.

The CHAIRMAN. It all goes into the same item.

Mr. WAGNER. It is quite a different item.

The CHAIRMAN. In other words, you got the contract to do these jobs, whatever they were?

Mr. WAGNER. To build some buildings.

The CHAIRMAN. In the contract, let me see if I recite it anywhere near right, in the contract was a provision that there must be delivery on or before a certain time, I take it.

Mr. WAGNER. That is correct.

The CHAIRMAN. At the time you took the contract, there were no roads, and no grading?

Mr. WAGNER. The roads had just been started.

The CHAIRMAN. And you took it on the assumption or on the guarantee, which, that the roads and grading would be done?

Mr. WAGNER. The area engineer stated to us that the roads on this project—this was around the 12th of October 1943—42—the roads were to be completed around the area by October 30.

The CHAIRMAN. Were you to have your supplies and commodities delivered?

Mr. WAGNER. At that time, we did not have the contract, we merely went there to familiarize ourselves with our working conditions, so that we might bid accordingly.

The CHAIRMAN. Now then, the area engineer told you that?

Mr. WAGNER. He told us that the road contract had been let with those provisions.

The CHAIRMAN. Then on that information obtained by you from the area engineer, you proceeded to negotiate the contract?

Mr. WAGNER. That is correct.

The CHAIRMAN. And the contract provided for delivery or completion on or before a certain time?

Mr. WAGNER. That is true.

The CHAIRMAN. Which was after the date at which the roads were to be completed?

Mr. WAGNER. That is correct.

The CHAIRMAN. I am just guessing at this thing as I visualize the picture, and I am not trying to decide it, and I do not think it is the province of this chairman to decide it. I am only trying to get the thing straightened out, to see whether or not the language of the act fits the case. If it does not fit the case, then perhaps we had better get legislation that will fit such a case.

Mr. WAGNER. If I might interrupt at that point, Senator, the Act reads, "if it will help prosecute the war." Our only difference here, all we ask is that our claim be permitted to be adjudicated by the ASF. Our case finally, the third time, with the approval of all other departments, reached the ASF a week after the war ended, so we were advised that in view of the current status of the war effort [reading]:

> It is not considered that a finding can be made at this time that granting the relief requested by the contractor will facilitate the prosecution of the war.

So approval has been denied, and there is no other reason.

The CHAIRMAN. I see the proposition. Of course, that is an extremely narrow view to take of the language, but the language is still there, and the view may be technically in keeping with the purview of the language.

Mr. WAGNER. That is correct, so all we would like to have is to have the amendment made to the act that will read [reading]:

> If the efforts of the contractor and the loss he sustained was due to work that was done to help prosecute the war, no matter what period of the war, that relief should be granted.

The CHAIRMAN. If, at the time the contractor sustained the loss, he was in the act of assisting in the prosecution of the war or the war effort, that is the spirit in my judgment of the law.

Mr. WAGNER. That is true.

The CHAIRMAN. It may be that the language cuts off the spirit. I do not know. The spirit giveth life, they say, but the letter killeth. That is pretty true in this case.

Mr. WAGNER. My case is a long one, and I do not know whether you are interested in all of the facts that led up to it.

The CHAIRMAN. The facts were pretty well stated yesterday, were they not, by the Senator?

Mr. WAGNER. We tried to make an effort to do something in the interest of the war. What is left of the Enjay Construction Co., we offered our services to the district engineers' office in Chicago, at very close prices, and he said:

> Well, that is admirable. If you can prove that you are able to do this kind of work by your references, we would be glad to have you filling jobs.

Several days after giving those references, we were asked to figure the Lincoln Ordnance Depot. Our bid was $1,579,000. We were $160,000 below the second bidder, and $400,000 below the third bidder. We completed that job even though in one month, the month of June, we had 2 inches of rain above normal, and the month of July, 4 inches of rain above normal. We started the job on the 4th of June and

finished it the latter part of September, so that by that accomplishment, I think that we have proven our capabilities to handle another job.

The CHAIRMAN. Now, your loss came solely because of the absence of the grading in the roads?

Mr. WAGNER. Primarily, I would say 85 percent of it.

The CHAIRMAN. And that is the loss, then, I take it, came by delay and the necessity for additional equipment?

Mr. WAGNER. It was additional equipment, that extended the completion of the job, and it required considerable overtime; in other words, our overtime-period pay roll represents a little less than half of the total pay roll, because we had to work when it was possible to work, under all kinds of weather conditions.

Now, that job at Springfield was the first one, and that is not the one on which we sustained the loss.

After that one was completed the latter part of September, we received a call from Colonel Woodbury, and he said:

"You fellows did such a grand job, would you like to figure another one on the same basis?"

We told him that as long as the war was in existence, the services of our corporation were at the command of the Army or any part of the Government. So we figured the hospital job for Camp Ellis.

Now, here is where the distinction comes in between the two jobs. On Springfield, we controlled the roads, and we did the grading. On the Camp Ellis job, the Government sublet the road contract, they also sublet the grading, which meant that we did not have control of that job. The fact that the Government contractors failed in doing their part of the work, we suffered a loss.

That is not entirely due to the contractor's fault either, because we have been told that the contractor's equipment had been frozen on another Government job, so that he was delayed long enough on his road work, as an illustration, to the point where freezing weather set in. So when he got his equipment he could no longer build a road on frozen ground, and as a result, we had no roads. We had horses that actually sank to their necks in mud, where we had to dig them out with cranes and belts around their stomachs, and lift them out of the holes, and still we finished one-hundred-and-some-odd buildings and several miles of corridor, knowing that the buildings were needed, they had troops coming in there, relying entirely on the fact that the War Power Act provides for relief under those conditions.

Now, at first, when our claim was presented, our loss was $462,000 on that job. When we asked for relief, we were told that since the question of roads was not a part of a written contract and that there was no guarantee in our contract or in the specifications that the roads would be completed by a certain date, the intention was there, the way the major put it, the intention was there, but we did not guarantee it.

As a result, they said, "The Government cannot legally allow any payment."

The CHAIRMAN. Let me clear that a little bit. Was that the case in which the area engineer told you that he would have the roads and the grading done, or was it the other case?

Mr. WAGNER. The other case we controlled the grading, that was in our contract, but on the Camp Ellis job, the roads and grades were omitted from the contract.

The CHAIRMAN. But you had been told by the area engineer that the roads and grade would be in?

Mr. WAGNER. We were told, and it is borne out by the contracts which are in existence.

The CHAIRMAN. Is that sustained by the statement of the engineer?

Mr. WAGNER. Yes; because that came out in a meeting where they brought out the contracts, and said that the roads were to be completed by October 30 and November 14.

The CHAIRMAN. If the roads had been completed and the grades had been in by the 14th of November, then could you have accomplished the contract?

Mr. WAGNER. Definitely, that was proven in the other contract where we did have control, but some of the grading was not done until January, and some of it even later, the final grading not until May.

The CHAIRMAN. All right.

Mr. WAGNER. So that you will understand why the amount of relief that we are offered here in August of 1944, we signed an agreement with the Government that we would accept $215,000 in full settlement of our loss.

The CHAIRMAN. How did that come about, please, where did that meeting of the minds on that amount come about?

Mr. WAGNER. It was offered on the premise, Mr. Chairman, that when we bid on the Camp Ellis job, and on Springfield we furnished a surety bond, but when we bid on the Camp Ellis job, Colonel Humphreys said:

> You fellows did such a grand job on Springfield, we are going to deduct from your proposal the amount of the premium to furnish a bond, and we will not require a bond from you on this job.

By doing that, of course, hindsight is better than foresight, but by doing that, the creditors, our subcontractors, had no protection except our ability to complete the job without loss or our financial ability to pay if we did have a loss.

Well, when we started out, Mr. Rudeberg and I, between us had $125,000. That is gone. We are in debt today to the tune of $350,000. You asked how we arrived at this $215,000.

It was suggested that since the Government had not accepted the bond, the surety bond for the benefit of creditors, that a recommendation was made that a sufficient amount to enable us to pay our creditors be allowed so the creditors could be paid exclusive of the bank with whom we had a bank loan.

The CHAIRMAN. Who entered into that suggestion, that suggested agreement?

Mr. WAGNER. That was the district engineer's office, and that is the agreement which was signed August 19, 1944.

The CHAIRMAN. That agreement was signed and approved by the parties?

Mr. WAGNER. It was approved by the District Engineers Office, the division engineer's office, the Chief of Engineers, but the approval was to be finally made by ASF. The basis of that sort of an arrangement was the fact that only recently, that is, prior to that particular time, such a settlement was made in a Caplan case, where they had not furnished a bond, and the Government paid the subcontractors.

So when it got to the ASF, it was returned to us with the statement that they approved such a comment before, but they cannot approve any more on that premise.

So then, the district engineer's office took the position, "Well, under the War Power Act let us prove that you are important to the war effort," all of this you understand, while there has been no desire on the part of the Government not to give us some relief, but the medium of how to go about it. So they decided to prepare a brief that would indicate that we are important to the war effort. That was done, because we also developed other things for the Bureau of Aeronautics for the Navy. So when the case finally came up to the ASF, again it was denied on the premise that there was no contractor important enough to pay $215,000 to keep them in business, if someone else probably could do the work that we were doing.

The CHAIRMAN. When was that decision arrived at?

Mr. WAGNER. That was in the early part of 1945, before the war closed.

The CHAIRMAN. Before the war closed?

Mr. WAGNER. Yes, sir. But it was acknowledged that there were merits to our case, and a Captain Johnston from the Chief of Engineer's office was sent to Chicago to help us prepare and help the district engineer's office to prepare a case, establishing the merits and the facts on which at least $215,000 might be paid, and this was the result of that brief that was prepared, the facts and figures.

That agreement again was prepared by the district engineer's office, approved by the division engineer's office, the colonel in both cases, and by the Chief Engineer in Washington, but unfortunately it arrived at ASF about a week after the war ended, and we received this letter then that the claim after 3 years, mind you, of trying to get relief, could not be allowed because it no longer would help to prosecute the war.

The CHAIRMAN. Because the war had ended?

Mr. WAGNER. That is right.

The CHAIRMAN. You should have kept the war going for another week or so.

Mr. WAGNER. We would just as soon lose all of the money if that were the case; a life is a life, after all. But we have been kept in business only because of an understanding with our creditors, that as long as this War Power Act was in existence we could prove to them that we could and would get relief, the language is very plain.

Now then, if we go to work and change this legislation to the point of where it might have to go to General Accounting, or it might have to go to a Court of Claims, we are out of business tomorrow, just as soon as that is known, because all of these fellows are going along simply because they know that we are entitled to relief, and if the machinery is gone, then they are going to close down on us, not only ourselves, but some of our subcontractors.

The CHAIRMAN. You are liable to have to go to General Accounting, I do not think that you can draft a bill that will avoid the General Accounting Office, but that may be all to the good for you and not against you.

Mr. WAGNER. But it would take such an awful long time to go through with all of this. For instance, we were within possibly a

week or 10 days or 2 weeks from getting our claim allowed. Is there not some way that legislation can be brought about by such as this bill, to change the wording a little bit, so that it would merely clear up what you yourself admit was not the intention when the First War Powers Act was written?

The CHAIRMAN. If you leave it to me, I could, but I cannot tell you what a committee will do, and I cannot tell you what the Senate will do and what the House of Representatives will do or the Judiciary Committee of the House of Representatives. Either way you go, you have got a trail to follow here that does not wind up in a day. I could decide it for you very quickly, but what I would do is just apply a little horse sense.

Mr. WAGNER. This language is quite clear.

The CHAIRMAN. It seems to me it is.

Mr. WAGNER. If this other bill can be submitted for approval, why can not the wording be changed a little bit to bring out what we are trying to accomplish here?

The CHAIRMAN. I understand what you are trying to accomplish, and I think the committee will understand what you are trying to accomplish. I think the only object that we have in allowing you gentlemen as you come in here to state your cases, is to show to the committee the necessity for a clarifying statute, to clarify and make emphatic the things that Congress sought to do when it passed the War Powers Act.

Now, I think that that is the only object, otherwise there would be nothing in letting you state your case here, because I could not decide it. I have no authority to decide it, I wish that I had. But you make a very clear case to me, and I am impressed, and I think my committee will be impressed that there should be legislation emphatically to clear it up, and in all probability the War Department would want legislation. I do not know. At least, they may want legislation to guide them in how to decide the matter.

We will do everything that we can for you here to get that out, but the General Accounting Office yesterday drew to our attention things that I thought were quite serious in the language as it exists in this pending bill.

Mr. WAGNER. Because of the words "manifest injustice"?

The CHAIRMAN. Because of several expressions in there.

Mr. WAGNER. If the general regulations are followed, the language is so plain and if the Department which handles the case, in this case the Army, they are better able to judge whether or not we are entitled to relief, or whether conditions came up beyond our control that cost us money, more so than the General Accounting Office. The people who have direct contact with the job would be better able to do that.

Now then, I understand further, which Mr. Sullivan will elaborate on, there is a law on the statute books which says that the department involved is the department to make the decision as to where relief is to be granted.

The CHAIRMAN. But remember this, the Congress of the United States has set up the General Accounting Office for the protection of Congress to see that the money is expended as we intend it should be expended, so after all, the War Department, they must go through the General Accounting Office. That is the only way we have any protection is through the General Accounting Office.

But I do not think that you need worry, we will try to do the best we can with the situation as we see it.

Mr. WAGNER. The point I am trying to clear up is whatever legislation there will be, let it be soon or let it become effective as soon as possible, because we would like to stay in business, and every day the phone is ringing, and we have got to promise this fellow tomorrow, tomorrow, tomorrow. If it carries on for another 2 or 3 years, we have done our work, and the Government and the war effort have benefited by what we have done, and I do not think that fellows that cannot afford it, like ourselves, should have to wait maybe until we are tripping over our beards in order to get the money that we have rightfully coming to us.

The CHAIRMAN. I do not think that there is any question about it, I think that those who meritoriously contributed to the war effort should not be permitted to lose. That is my personal opinion. At the same time, I would so draft the language as to see to it that every dog and cat did not get a chance to jump into the puddle and grab something when he did not merit anything.

Those are the two points between which we must work.

Mr. WAGNER. That is the point that the General Accounting Office brought up. Now then, relief is to be granted where relief is needed. We have taken losses on other jobs, and we have said nothing about it, but at this time we have faced the problem of being put out of business, and you can even make that loss so broad that it will cover the fellow who is going to be put into bankruptcy, if you want to, and that would be in our classification and a lot of others, who are here today probably.

The CHAIRMAN. We will try to draft the bill, with the aid of the best counsel that we can secure, and we may not pass the bill as it is now, and it may not pass at all, but if I had the doing of it alone, it would pass, but would pass in such a way that it would meet the point emphatically. That is all that I can say to you, and I am only speaking now as an individual.

Mr. WAGNER. Thank you, Mr. Chairman.

The CHAIRMAN. Is Mr. Rudeberg here? Mr. Rudeberg, if the witness who just left the stand has fairly well stated the case, I respectfully suggest that you follow the precept of a little colored boy who said, "Them there is my sentiments."

STATEMENT OF W. P. RUDEBERG, VICE PRESIDENT OF ENJAY CONSTRUCTION CO.

Mr. RUDEBERG. I was going to say exactly that, but I wish to bring up one point, that the very existence of the War Powers Act is the only thing that keeps us from going into immediate bankruptcy. The anticipation of the subcontractors, the creditors, that they would ultimately be paid, kept us in business. When the War Powers Act ceased to apply, we were in hot water immediately.

We had to negotiate a new moratorium on the anticipation of new legislation that would give them relief.

The CHAIRMAN. Let me ask you something. This $200,000 mentioned by your partner, or whatever the sum was, the president of the company, if you received that would that pull you out of the hole?

Mr. RUDEBERG. Yes; we could manage.

The CHAIRMAN. You would still be losing?

Mr. RUDEBERG. We would still be very much in debt.

The CHAIRMAN. How much, approximately?

Mr. RUDEBERG. In excess of $100,000.

The CHAIRMAN. And that comes by reason of conditions that surrounded the performance of your duties under the contract?

Mr. RUDEBERG. Yes, sir.

The CHAIRMAN. It is a direct loss out of that transaction, is that right?

Mr. RUDEBERG. Yes, sir. It may interest you to know why we accepted so small a sum in relation to the total amount, but in 1944, in August, it looked as if the war were to end very soon and, of course, it did not prove to be that way, but it looked like it would end before the end of that year, in Germany, so we accepted that amount at that time since it was in a formal modification document.

The CHAIRMAN. Looking to perhaps making up your other losses by other contracts or by going into civil activity?

Mr. RUDEBERG. Well, the war was still on, we would have done mostly war work; in fact, we have done war work since that time, both for the Navy and the Army.

The CHAIRMAN. All right. Thank you very much, Mr. Rudeberg.

Mr. George M. Wray, Davis Construction Co.

STATEMENT OF GEORGE M. WRAY, DAVIS CONSTRUCTION CO.

The CHAIRMAN. Where is the Davis Construction Co. located?

Mr. WRAY. In Chicago, Mr. Chairman.

The CHAIRMAN. What position do you occupy with it?

Mr. WRAY. I am a member of the firm, of which my father is the president.

The CHAIRMAN. What is your general line of business?

Mr. WRAY. We are heating contractors, heating and piping contractors, and we had the subcontract for the heating of the steam piping under Enjay Construction in Camp Ellis. We finished our job.

The CHAIRMAN. You were a subcontractor?

Mr. WRAY. Under the Enjay Construction Co.

The CHAIRMAN. I see.

Mr. WRAY. And our position at the present time is that we are still owed $70,000 by Enjay Construction Co., and we also face bankruptcy unless we are able to obtain the money from Enjay Construction Co. We have been able to hold our creditors off on the premise that Enjay would get relief, and if they do not, we also are forced into bankruptcy; and we feel that we have this added point, that in normal civilian contracts where a bond is waived, a contractor can file a lien on the owner of the building, and if that bill is not paid by the owner, they cannot obtain the building until we give a waiver of the lien.

In this particular case, the Government waived the payment of bond and in turn waived any protection that we had for payment, so that we have been left at the point where we are only asking the money that we originally contracted to get, and we have no way of getting it except through Enjay Construction Co.

The CHAIRMAN. Under the rulings and decisions and interpretations, and so forth, made by the War Department?

Mr. WRAY. That is correct; yes, sir.

The CHAIRMAN. Now, I take it that this case, like others, has been carried to the authority of last resort in the War Department?

Mr. WRAY. I believe so; yes, sir. It was taken up on the premise that the Government did share some responsibility for the nonpayment to Enjay's subcontractors, because they had not protected us. I also understand apropos of the same subject that just 30 days after the contract was awarded to the Enjay Construction Co., that a new regulation was sent down, not permitting a contracting officer to waive that payment bond, just 30 days after that contract was given, and I imagine it was to protect people from the same situations in which we find ourselves.

Under the testimony yesterday from the Accounting Office, the only thought that I had regarding that was that the term "manifest injustice" seemed to be too general a term. I think actually everyone who is going to be affected by this and who is much concerned in it is one who faces bankruptcy, unless he gets relief, and I wonder if it would be possible to correct that general term enough so that it could include only those who face bankruptcy, that it would narrow the group considerably, which is actually, I think, what everyone is looking for who is here today, that is to avoid bankruptcy.

As Mr. Wagner said previously, as contractors we have all from time to time taken losses on contracts, but that is a big difference between taking a loss on a contract and going into bankruptcy because of not any fault of your own.

The CHAIRMAN. Is there anything further?

Mr. WRAY. That is all.

STATEMENT OF JOHN S. McKEE, LAKE STATES ENGINEERING CO., CHICAGO, ILL.

The CHAIRMAN. Mr. John S. McKee of the Lake States Engineering Co. Mr. McKee, where is your place of residence and your place of business, if you please?

Mr. MCKEE. I live in Glencoe, Ill., and my business is in Chicago, Ill. I am a partner of the Lake States Engineering Co.

The CHAIRMAN. What is the Lake States Engineering Co., and what is its business?

Mr. MCKEE. We are contractors principally engaged in foundation and water-front work, water-front construction.

The CHAIRMAN. All right. You may make any statement that you desire with reference to the pending matter.

Mr. MCKEE. When Mr. Weitzel was speaking yesterday from the General Accounting Office, he called attention to the fact that in his opinion the bill possibly would not cover contractors in our business, that it only covers suppliers, and, I believe, people who furnish material. If the bill should be interpreted that way, of course that would be the final catastrophe for us and I am sure it was not the intention to exclude contractors.

The CHAIRMAN. What did you do in the war effort?

Mr. MCKEE. Here is a list that might be included in the record, of construction work that we did for the war. It included everything from mounting antiaircraft guns to defend naval installations to other things.

The CHAIRMAN. This is what you did under contract during the war? Let me read this list.

It is the United States Naval Academy at Annapolis, Md.: Sea wall and sewers, and bulkhead and foundation for oil storage, gun foundations and mounting, test piles and borings, pile foundations, boat-repair building.

Penn-Jersey Shipbuilding Co., Camden, N. J.: ship launchways and trestles, pier construction, trestle construction.

Navy Yard, Philadelphia, Pa.: Bulkhead, naval aircraft factory; pier fender system, piers 2 and 6.

John H. Mathis Co., Camden, N. J.: Outfitting pier; outfitting pier and bulkhead; pier extension; ship fabrication, eight steel cargo vessels, hulls.

Jeffersonville Boat & Machine Co., Jeffersonville, Ind.: Ship launchway.

R. T. C. Shipyard, Camden, N. J.: Outfitting pier.

Seneca Shipyard, Seneca, Ill.: Mooring piers.

Pittsburgh Ferromanganese Corp., Chester, Pa.: Blast furnace foundation.

Aluminum Co. of America and Defense Plant Corporation at Newark, Ohio: Mill foundation.

United States engineers, Louisville district, Paducah, Ky: Island Creek Dam.

Now, on which of these did you sustain a loss and to which do you wish to address your statements?

Mr. McKee. On the bulk of those jobs we made a rather modest profit, which incidentally, went through renegotiation and they decided that we were entitled to all that we had made on them. On the Island Creek Dam contract we sustained a very material loss. In the statements yesterday, Senator Lucas covered that at some length so I will not try to cover the same ground again. There were several things which caused the loss that were not covered.

In the first place, after the submitting of our proposal to the Government, the prices were negotiated and it was an across-the-table negotiation in order to cover all of the facts because the time permitted for studying the job was rather limited and we were to be given the benefit of the Government information regarding the job. As a result of information given to us by the Government, our prices were reduced. Subsequently it has been developed and freely admitted by the Government that the cost information and other data given us was in error. Their costs were based on different types of work, which were not applicable to the work in question. Also there was a delay by the Government which had a very serious effect on the cost of the job, and all of this has been covered at considerable length in the documents.

On account of these reasons, principally, we would have had to abandon the job early in 1944. However, relying on the statements of the contracting officer that we would be allowed to file war powers relief and that if we continued work under the contract, that would increase, and possibly assure the granting of war powers relief, we persuaded our creditors to continue with us, and we did complete the work.

We completed it before the end of the war and actually 2 weeks before the flood of the Ohio River last year.

The Chairman. That was at Island Creek Dam?

Mr. McKee. That is correct; this dam was the last unit of the flood protection for the city of Paducah. Everything else had been com-

pleted except this one unit, and there were some rather important railroad facilities and a number of war industries in the city, which the Government considered merited that protection.

The CHAIRMAN. Now, was this dam put in under the War Department direction?

Mr. MCKEE. Yes, sir. It was handled by the Army engineers, of the Louisville district.

The CHAIRMAN. You credit your losses to a misconception of the prices?

Mr. MCKEE. Very largely, sir, due to information given us by the Government.

The CHAIRMAN. Now, you made application for a correction of your losses, to the War Department?

Mr. MCKEE. Yes, sir.

The CHAIRMAN. How far did that go in the War Department?

Mr. MCKEE. That went through the district engineers, the division engineers, and the Chief of Engineers.

The CHAIRMAN. What was their action with reference to your claim?

Mr. MCKEE. It was approved by all of them.

The CHAIRMAN. And where was the turn-down?

Mr. MCKEE. It reached the Army Service Forces on the 28th of August of 1945, about 2 weeks after the cessation of hostilities.

The CHAIRMAN. Did they tell you that your claim was meritorious; have you got that in writing?

Mr. MCKEE. I have a confirmation of our conversation which was sent to Colonel Holland the same day as the conversation.

The CHAIRMAN. And in that they say that your claims were meritorious?

Mr. MCKEE. That is correct, sir. Those were not the exact words, but that was the substance of it.

The CHAIRMAN. But they denied relief because the war had ceased?

Mr. MCKEE. That is correct.

The CHAIRMAN. And you were no longer active in the war effort?

Mr. MCKEE. The payment of the money would not facilitate the war, I believe is the wording used.

The CHAIRMAN. Payment of the money would what?

Mr. MCKEE. Would not facilitate the war.

The CHAIRMAN. I see. Now, is that the only phase of complaint that you have, the others were adjusted, all of the other contracts that you had, all of the other things?

Mr. MCKEE. With one exception, sir. We constructed hulls for ships for the Army Transportation Corps as a subcontract, and that contract was terminated although after the termination we were required to complete eight ships. In fact, all of the ships that they had us do. We had a termination claim under that termination which we also had to complete after we had filed our war powers petition on the Island Creek Dam.

The CHAIRMAN. Now, let me get that clear. You were compelled to continue until you had completed these ships, even though the war had ceased?

Mr. MCKEE. No, sir, the war had not ceased, but the Army for some reason or other, for their own purposes, decided to terminate 9 out of the 17 ships in our contract.

The CHAIRMAN. That was a part of your contract?

Mr. MCKEE. But they still wanted us to complete eight ships, which we did complete.

The CHAIRMAN. Where was your loss on that?

Mr. MCKEE. We have a termination claim on that.

The CHAIRMAN. A termination claim in connection with the nine ships?

Mr. MCKEE. Yes; on account of the ones terminated. The reason for our loss is this: The War Department followed a policy of recognizing hardship. That is if a contractor suffered a loss but was considered necessary to the war, the War Powers Act was used to grant him the necessary relief. In evaluating this hardship, the War Department looked into the over-all profit and loss position of the contractor.

In other words, if a contractor was making $1,000,000, one place, but lost in this one job, they would not consider him under war-powers relief, that was our understanding. In order to do this it was necessary for our company, the Lake States Engineering, to settle claims with the Army Transportation Corps, in order to make a complete financial picture, that is, for computing the amount of war powers relief that was necessary.

The Transportation Corps ship claim being a small item compared to the other, we sacrificed some $75,000 to get a complete amount there. The war powers relief was then cut off. The transportation case was finally settled although it has been generally recognized by the Office of Contract Settlement that we should have received approximately the original amount.

Under those conditions, it seems that either it should be possible to reopen the final settlement against which there is a good deal of argument, or consideration of this finally settled contract should be allowed in conjunction with the war powers relief. In other words, it seems to me that in considering the war powers relief, the entire financial picture could be considered.

The CHAIRMAN. How far did you carry that case, in the War Department?

Mr. MCKEE. Just to the Transportation Corps.

The CHAIRMAN. What did they do with it? Did they turn it down?

Mr. MCKEE. After the war powers relief was denied us, they sent it up to the Director of Contract Settlement.

The CHAIRMAN. What did he say, or what was said there?

Mr. MCKEE. He felt that we could not reopen the case, because it was finally settled. However, he did look into our entire situation, and he felt, I believe very strongly, that we should have relief, and legislation such as this should be enacted.

The CHAIRMAN. Have you studied this bill that is pending before this committee?

Mr. MCKEE. Yes, sir; I am not a lawyer, however.

The CHAIRMAN. You have had counsel look into it?

Mr. MCKEE. Yes, sir.

The CHAIRMAN. Does your counsel advise you that under the language of this bill you would be entitled to relief if the merits of your case justified?

Mr. MCKEE. Yes, sir; he does.

The CHAIRMAN. That is what I am interested in.

Mr. McKee. It does depend upon interpretation, however.

The Chairman. In other words, we are now trying to enact a bill, and will we have to interpret that bill also, and will the War Department have to interpret that bill, or shall we make it so plain that it will lay the road wide open for the War Department to render justice in a given case? That is the thing that I have in mind, on account of the statements made to us yesterday here by the representative of the Comptroller's office.

Mr. McKee. We are very desirous of having justice assured.

The Chairman. That is right.

Mr. McKee. We are also very anxious to have it done as promptly as possible, because both my partner and I have put everything we have into the business, including our insurance.

The Chairman. What I want to know is if everybody is satisfied that this bill in its present form will do the job for you.

Mr. McKee. I am certain it would have to be worded to cover contractors.

The Chairman. I do not like to work for weeks and then put a bill through that when we get it all through, does not cover the case, or the War Department can say, "Well, we are no better off than we were, because here is certain language that limits our action. We recognize the merits of this case, but the language of this bill forestalls us."

Do you see what I have in mind?

Mr. McKee. Yes, sir; I do.

The Chairman. That is all. That is what I wanted you to think about, and if you have counsel, I would have him give very serious thought to it. I am not passing upon it at all; I am just telling you.

Mr. McKee. Yes, sir.

The Chairman. Is there anything further?

Mr. McKee. I think that that covers our situation, sir.

The Chairman. Thank you very much.

This list of war work completed by the Lake States Engineering Co. will be filed.

Now, Mr. Clyde H. Smith, from the McGann Manufacturing Co.

Mr. Smith. Yes, sir.

The Chairman. Very well, Mr. Smith, you may proceed.

STATEMENT OF CLYDE H. SMITH, PRESIDENT OF THE McGANN MANUFACTURING CO., INC.

Mr. Smith. Mr. Chairman, my name is Clyde H. Smith. I live in Pennsylvania. I am president of the McGann Manufacturing Co., located at York, Pa., and our case is somewhat similar to these others.

The Chairman. What is your business?

Mr. Smith. We have a foundry, machine shop, and plate shop; and our particular difficulty was caused by a subcontract for the Dravo Corp., Pittsburgh, who were prime contractors for the Navy, building LST boats.

I would like to give a résumé.

And, incidentally, we are operating under chapter 10 of the Bankruptcy Act by reason of this loss.

In March of 1944 my company had a liquid cash position of approximately $90,000 and owed but $25,000 on a first mortgage. Today we

are operating under chapter 10 of the Bankruptcy Act by reason of the fact that we owe creditors approximately $113,000 and the Reconstruction Finance Corporation a quarter of a million.

The bulk of this money was lost on this contract in this manner: In February of 1944 the LST boat section was considered one of the highest priority jobs in the country by reason of the fact that there weren't enough being built fast enough, and the Dravo Corp. were looking for subcontractors. They came down and looked over our facilities and our plant, and we in turn sent our foremen and subforemen to Pittsburgh to look over what they were doing, and it was mutually decided we could build these LST boat sections.

However, when it came to price, we had just lost two engineers to the Army, and not having enough engineers for us to figure the job, since these blueprints were voluminous, we put the proposition to the Dravo Corp. that this was their war as well as ours, and if we made too much money it would be taken away again, and asked that they tell us what we should do the job for. They did, and priced it at $117 a ton. We signed a contract to do the work. Then, after 4 months of operation, I, as treasurer, began getting cost sheets. It seemed we were running into terriffic losses. We were forced to go to the Smaller War Plants for operating capital.

I contacted the Dravo Corp. and asked for relief, asked that the contract be revised upward and made retroactive for relief for the loss we had had, because they were working on a cost-plus contract, and we had taken, at their insistence, a fixed-price contract. This was refused.

We then got in contact with the RFC and Smaller War Plants officials, and it was agreed we would cancel the contract and prepare claims for unrecovered cost, but no profit. This was done.

I went to Pittsburgh with the representative of the Smaller War Plants and Reconstruction Finance, and we canceled the contract and then we prepared a claim. It is rather voluminous and I will not clutter up the record by presenting it, because it is being presented to the Navy.

The CHAIRMAN. Yes.

Mr. SMITH. We subsequently prepared a supplemental claim. This was done at a cost of pretty near $18,000. They analyzed costs and showed those costs to be approximately $300,000 unrecovered cost.

The Navy told us that under the War Powers Act we had quit, the contract had stopped, and no longer could we be deemed necessary to the war effort under the War Powers Act, and, being a subcontractor, they could not deal with us, that we would have to deal with the prime contractor.

We went back to the prime contractor, and they took the stand that we had taken a fixed price contract and agreed, however, that they would accept the claim and O. K. as many items as they could, which they did. The rest of it came back to the Navy.

In the meantime, we will be adjudicated bankrupt and lose our plant and close the business in York if we cannot get some help.

The CHAIRMAN. What did they hold under the War Powers Act?

Mr. SMITH. That our job had stopped and we were no longer operating in the war effort. However, we were building winches for the Maritime Commission. But we had stopped that contract, and as such we were not necessary under the War Powers Act.

The CHAIRMAN. When did they render that decision?

Mr. SMITH. That was an informal decision rendered by the counsel for the Navy, Captains Goce, Fosha, and Mr. Loran, under date of July 20, 1945. This was at an informal meeting with my attorney and the engineer who prepared this claim. That was the only relief the Navy could give us; and in view of the fact that we had stopped the job, we were precluded under the War Powers Act.

The CHAIRMAN. All right, sir. Thank you.

Mr. SMITH. There is one thing more I would like to point out in the wording of the bill. Page 2, line 5, where it says, reading down to it:

such action is necessary to prevent a manifest injustice to a firm, corporation, or individual who has furnished supplies or services for the Government.

We would like to have inserted, or suggest that it should be: "either as a prime contractor or a subcontractor" so that we would have subcontractor rights.

I would like to present this statement for the record.

The CHAIRMAN. All right.

(The statement referred to is as follows:)

STATEMENT OF CLYDE H. SMITH OF THE MCGANN MANUFACTURING CO., INC., BEFORE THE SENATE JUDICIARY COMMITTEE ON SENATE BILL 1477, APRIL 12, 1946

It is my understanding that bill S. 1477 is intended to adjust and relieve financial inequities for concerns who suffered losses on war contracts.

This being true, I would like to present the story of the McGann Manufacturing Co., Inc.

In March of 1944 the company had a liquid cash position of approximately $90,000 and owing but $25,000 on a first mortgage.

During the month of February 1944 we entered into a contract with Dravo Corp., of Pittsburgh, to build LST boat sections as a subcontractor. We visited their shops and assembly yard with our various interested foremen and subforemen, and officials of the Dravo Corp. in turn visited our shops, these mutual visits being made to determine whether or not our facilities were suitable for this job. After determining that we could do the job, we could not give the Dravo Corp. an early bid due to the fact that our small engineering force had been decimated by the draft, and we were physically unable to go through all of the huge pile of prints in any intelligent manner to give an accurate price per ton for fabrication. We told the Dravo people that this was our war as well as theirs, and we wanted to assist in the program (which was one of the highest priority jobs at that time). And they were to establish the fabricated price per ton.

This they did, telling us that $117 per ton was a fair price. We then signed a contract to do this work at this price.

After we had been in the program for 3 or 4 months we found that we could not do this work at the price Dravo had established; and I, as treasurer of the company, asked for a price revision upward to cover our costs and loss. This was refused.

During this time we were compelled to come to the Smaller War Plant Corporation for financial aid; and, seeing huge losses mounting, we requested a cancellation of the contract.

The Reconstruction Finance Corporation's Philadelphia office, who were servicing the Smaller War Plant Corporation's loan, sent a Mr. Weigant, and the Smaller War Plant Corporation sent a Mr. McKay, with me to Pittsburgh to cancel the contract—which was done.

I then had an independent engineering firm, the George M. Arisman Associates of Harrisburg, Pa., prepare a claim for the recovery of costs on this contract. This claim was prepared in minute detail and presented to the Dravo Corp. in the amount of $297,926.50. Dravo have acknowledged $32,002.27, leaving a balance of $265,924.23 of unrecovered costs, and have forwarded our claim on the Bureau of Ships, Navy Department, Washington, D. C. The Navy has not as yet made any decision but some 4 or 5 months ago indicated there was no way they could remedy the situation without some congressional action.

We might add that the Dravo Corp. had an original cost-plus-type contract, later changed to incentive-type contract after they had time to determine their true costs. We asked that we be given the same cost-plus-protection and were told that after the work had been done this would be impossible. The Dravo Corp. were also provided with all of the latest handling and manufacturing facilities, whereas, when we asked for facility help, we were told to use the tools we had.

We now owe the Reconstruction Finance Corporation approximately $420,000 less good current termination claims of $132,000, and the $32,000 admitted by Dravo when collected and applied to the Reconstruction Finance Corporation loan will have a balance due Reconstruction Finance Corporation of approximately $256,000. We also owe approximately $113,000 to trade creditors.

Due to the Davo loss and additional losses on two maritime contracts and being unable to secure any relief, we are now operating under chapter 10 of the Bankruptcy Act; and unless we get relief on these losses, we will be adjudicated bankrupt.

This would mean destroying a going business in York, Pa., causing unemployment and doing a great harm to the owners of the business.

We therefore earnestly request favorable action for the adoption of Senate bill 1477.

The CHAIRMAN. The Navy has written to the committee. Section 17 of the Contract Settlement Act is quoted in part as follows [reading]:

"Where any person has arranged to furnish or furnished to a contracting agency or to a war contractor any materials, services, or facilities related to the prosecution of the war, without a formal contract, relying in good faith upon the apparent authority of an officer or agent of a contracting agency, written or oral instructions, or any other request to proceed from a contracting agency, the contracting agency shall pay such person fair compensation therefor.

"(b) Whenever any formal or technical defect or omission in any prime contract, or in any grant of authority to an officer or agent of a contracting agency who ordered any materials, services, and facilities might invalidate the contract or commitment, the contracting agency (1) shall not take advantage of such defect or omission; (2) shall amend, confirm, or ratify such contract or commitment without consideration in order to cure such defect or omission; and (3) shall make a fair settlement of any obligation thereby created or incurred by such agency, whether expressed or implied, in fact or in law, or in the nature of an implied or quasi contract."

Reading as follows further:

It will be seen that the above-quoted provision of law affords relief to contractors who have furnished supplies or services to the Government. Cases where no formal contract exists and cases where there are technical defects or omissions in a contract are covered expressly by the foregoing quoted provisions of existing law. This existing provision of law is considered adequate for the adjustment of meritorious claims relating to supplies and services furnished to the Government. It appears to be much broader than procedure followed under similar circumstances after World War I.

The single rule for granting relief under the bill S. 1477 is (upon the determination by the head of a department or agency): "action is necessary to prevent a manifest injustice." This rule or standard appears vague and indefinite and impossible of uniform application. It is believed that enactment of S. 1477 would result in the filing of a vast number of claims requiring extensive investigation and that those considered meritorious would have no greater advantage under its terms than is now available under existing provisions of law. If relief cannot be granted under existing law, it is doubtful that relief could be granted pursuant to the enactment of the bill S. 1477.

For the foregoing reasons, the Navy Department recommends against the enactment of the bill S. 1477.

Mr. SMITH. Yet by the same token, Mr. Chairman, we have been told informally some months ago that we could not come under any provision for the Navy to reimburse us for this loss, and I believe some of the other gentlemen here have testified before that they should not open this up so the Federal Government would be looked upon as

a Santa Claus to give everybody that came along money to which they were not entitled; but if the money was actually and honestly spent in a war contract I believe that something should be done to reimburse their losses.

If the over-all picture was that they had other contracts that they made money on, and this was one which showed a loss, I think they should be precluded from asking for relief. as long as the company remained solvent and whole; even though they lost money on one contract, I think they should be precluded under the act.

Any more questions, sir?

The CHAIRMAN. That is all.

Mr. SMITH. Thank you, sir.

The CHAIRMAN. Col. E. M. Brannon, of the War Department.

Colonel BRANNON. Mr. Chairman, Col. Park Holland is chairman of the War Contracts Relief Advisory Committee. With your permission, I would like to have him make the main statement.

The CHAIRMAN. Would you come forward, please, Colonel Holland. You may state your name, your rank and your position, and where you are presently.

STATEMENT OF COL. PARK HOLLAND, AIR CORPS, WAR DEPARTMENT

Colonel HOLLAND. I am Col. Park Holland, Air Corps, assigned to the Office of the Under Secretary of War, detailed for duty with Headquarters, Army Service Forces, in Washington, D. C.

Among my other duties is that of chairman of what we call the Contract Relief Advisory Committee, which has considered cases arising under the First War Powers Act. I have held this position for several years.

The CHAIRMAN. You have read the pending bill?

Colonel HOLLAND. I have read the pending bill and discussed it with legislative counsel during its preparation.

The CHAIRMAN. We would be glad to have your comments on it.

Colonel HOLLAND. First, might I digress from that and present the views of the War Department, or explain the views of the War Department?

The CHAIRMAN. Very well.

Colonel HOLLAND. The War Department has submitted a report, under date of March 18, I believe, in which it expresses opposition to the bill as written but states that it has no objection to the bill if it were amended in a manner suggested.

The amendment limits the bill in this prime particular: the bill as drafted would permit consideration of cases where the contracts were completed and final settlement made. The War Department amendment would limit the consideration of cases to those where the work was performed, or whatever the claim originated on, between December 7 and August 14, the same as set forth in the bill, but would eliminate from consideration those cases where final settlement has been agreed upon and accepted, and likewise those cases in which the work has been completed and final payment made except in those instances where a request for relief was made prior to VJ-day.

Those are the main differences. And with that amendment, the War Department would not object to the bill and does not object to the bill.

Some comment has been made by some of the witnesses as to whether or not subcontractors would be included under the bill. Subcontractors have always been included, in the opinion of the War Department, under the First War Powers Act, and you will note that this bill reads that authority is granted to amend contracts and enter into contracts. It is my understanding that the use of the phrase "enter into contracts" is for the purpose of covering subcontractors and that the amending refers to the amendment of contracts with prime contractors to afford them additional relief.

The CHAIRMAN. Now, the term "enter into contracts"—as a rule that term in law is applied where it is the making of a contract between two parties.

Colonel HOLLAND. Yes, sir.

The CHAIRMAN. Both enter into the contract.

Colonel HOLLAND. Yes, sir.

The CHAIRMAN. I am wondering if this language means that, or does it mean that the War Department in determining what relief would be granted would go into the contractual relation existing between the other parties.

Colonel HOLLAND. I believe it would, sir, but this is my own personal view. If a gentleman in the position of the man who just testified requested relief and appeared before the committee of which I happen to be chairman, the fact that he was a subcontractor would not prohibit such relief being granted; and that in the event it was granted a contract would be entered into with him whereby he would be reimbursed.

The CHAIRMAN. I see.

Colonel HOLLAND. I might say, sir, that the First War Powers Act must be considered in connection with Executive Order 9001, which contains the regulations prescribed by the President for the administration of that act. And it states therein that this is the Executive order that the War Department, Navy Department, Maritime Commission may by agreement modify or amend or settle claims under contracts and so on—

whenever in the judgment of the War Department, Navy Department, or in the United States Maritime Commission, respectively, the prosecution of the war is thereby facilitated.

It was because of that language, as I understand it, that the War Department determined that subsequent to VJ-day no determination could be made as of then or thereafter that any action proposed to be taken along the lines entered into or modifying a contract would facilitate the prosecution of the war.

It was for that reason, as I understand it, that relief was denied not on the merits but because of that circumstance.

I might state that the Enjay case referred to here, if that had been in the hands of my committee and returned for further investigation with a view to bringing out facts that would be of more help to the claim, if when it was returned to the committee of which I am chairman VJ-day had passed, we are unable to act.

The CHAIRMAN. You then construe it to mean that although during the period of war they had been in furtherance of the war effort, that when the war terminated, no matter what they had been doing, it just applied to them prior, and it could not be construed to give them relief thereafter?

Colonel HOLLAND. I did not make that determination. That was determined by higher authority. But that was my understanding of the belief of the War Department, that the making of the determination applied to future action, that the entering into this contract would facilitate the prosecution of the war.

You see, during the war we divided cases into, roughly, three classes. Definite hardship cases, where we needed to maintain a contractor in business to prosecute the war, it did not particularly matter whether he was unable to go on through his own fault or the Government's fault. We needed him, and handed out whatever money was essential for that purpose.

Another class was where a contractor suffered a loss through definite acts on the part of the Government. Perhaps this road situation might be analagous.

Another case was where a contractor relied on a specific promise of people that should have been able to or had the authority to carry them out.

Those were in general the classes of cases.

Now, it is my understanding and belief, as a person, that the case of Enjay and the case of Lake States, the case of Hanover Mills, are not such cases under which relief could be granted or payment made under contract settlement.

The CHAIRMAN. Under any of those headings?

Colonel HOLLAND. Exactly, sir. And the committee likewise consider all claims made to the War Department under the Contract Settlement Act. And we are handing the money out.

The CHAIRMAN. Studying this bill as it is now worded, will it accomplish the relief in these cases we have listened to? Assuming the merits to be as stated.

Colonel HOLLAND. Assuming the merits to be as stated, and assuming that the committee of which I am only one member, speaking of the War Department committee, assuming the committee feels they should get relief, we feel that relief could be granted under the terms as written with this possible exception. Personally, I construe that bill to include construction contracts. The War Department considers contracts for supplies to include construction contracts. If that is not clear, perhaps it should be modified.

The CHAIRMAN. That did strike me at the time it was being discussed here as being something we ought to look into a little bit. Is there anything further, Colonel?

Colonel HOLLAND. I think of nothing, sir.

The CHAIRMAN. Are there any questions from those concerned in these matters you would like to propound to the colonel? I think it might be a fairly good time. We have the colonel here where we can look at him. The witnesses here may propound questions based on his statement of the position.

Mr. SULLIVAN. I do not want to be the only guilty party, but with this excellent opportunity and your permission, Mr. Chairman, I do not know any time when I could get at this point better.

The CHAIRMAN. This is Mr. B. J. Sullivan, attorney for the Enjay Co.

Mr. SULLIVAN. I have here a copy of the rules and regulations of the War Department Board of Contract Appeals, and Colonel Holland may or may not be familiar with that. In the hope that he is I call

his attention to paragraph 2 of a memorandum of July 4, 1944, which undoubtedly refers to the termination of war contracts, from which the Navy quoted section 17 a and b. And if I understand the report correctly, they are saying, "We do not want this bill because 17 a and b of the War Termination Contracts Act of 1944, the provisions of 17 a and b, should be applied to the adjudication of claims filed under the First War Power Act." And this particular No. 2 of the memorandum of July 4, 1944, I want to ask the colonel whether or not he is familiar with that, and whether or not his interpretation of it would be the same.

Colonel HOLLAND. I do not feel qualified to interpret something put out under the signature of Mr. Stimson, Secretary of War, but I think the statement of what this was brought about by will answer it readily.

This is a memorandum, War Department Board of Contract Appeals, dated July 4, 1944, subject, Disposition of Appeals. Paragraph 1 does not seem to be germane; paragraph 2 covers another subject. [Reading:]

> Neither the Board nor the President thereof is authorized hereby to exercise authority under the First War Powers Act of 1941 or Executive Order 9001 not heretofore delegated to the Board.

Signed, "Henry L. Stimson."

In some of the cases referred to the Contract Relief Advisory Committee, of which I was Chairman, rather extensive investigation seemed necessary to arrive at the merits of the case. We had no facilities to make those investigations. In certain cases it did not seem apropos to ask the branch of the service to make that investigation. We preferred to have it made by some uninterested agency; so a procedure was set up whereby the War Department Board of Contract Appeals, who had facilities all over the country, would make such investigation and report findings of fact to our committee. This emphasized the fact that they cannot make decisions as to the payment of money under their general authority. That is all that it amounted to.

The CHAIRMAN. They could make recommendations?

Colonel HOLLAND. No; they would give us findings of fact without recommendation.

Mr. WEITZEL. Mr. Chairman, on behalf of the General Accounting Office, I would like to ask Colonel Holland one or two brief questions.

The CHAIRMAN. Very well.

Mr. WEITZEL. I do not wish to put the colonel on the spot or ask him to commit the War Department at all.

The CHAIRMAN. From the way he has been making his answers, I do not think it will be easy to put him on the spot.

Mr. WEITZEL. After all, as the chairman has pointed out, payments under any agreements entered into under the authority of this legislation would have to come before the General Accounting Office for settlement. I believe the colonel would agree to that.

Colonel HOLLAND. I imagine they would get there.

Mr. WEITZEL. As to the first page of the bill, I would like to ask the colonel if in his opinion, as to these subcontractors, a contract providing for the payment of money to a subcontractor on the ground it would prevent manifest injustice would be a contract under the provisions of this bill?

Colonel HOLLAND. I would so deem it. We deemed it that under the First War Powers Act when we dealt directly with subcontractors and authorized payment of money directly at the time, and it was done by virtue of the instruments filed by both parties providing for the payment forthwith to the subcontractor.

Mr. WEITZEL. Was the payment to a fixed-fee subcontractor in some cases?

Colonel HOLLAND. I do not recall that any of them were subcontractors on a cost PFF contract. They may have been. I do recall specifically one or two cases of fixed-price subcontractors to a fixed-price prime contractor.

Mr. WEITZEL. Was that payment made through the prime contractor or direct?

Colonel HOLLND. Direct.

Mr. WEITZEL. Do you think it would hurt to clarify the bill in that respect?

Colonel HOLLAND. If it is at all doubtful I think it should be clarified, because it was my understanding that that is the intention of the bill.

The CHAIRMAN. Yes.

Colonel HOLLAND. You understand, Senator, that all remarks that I have made, aside from reference to the reports submitted by the War Department, are personal comments.

The CHAIRMAN. Yes; so we understood.

Mr. WEITZEL. But you would have no objection to the clarification of the bill?

Colonel HOLLAND. Personally, not at all.

Mr. WEITZEL. Then, on page 2, that such action is necessary to prevent manifest injustice. Just speaking for yourself, I would like to inquire what standard you think should be applied there. Should there be a standard resulting in a fair profit to a contractor, or to prevent loss, or how far would you feel you were authorized to go in a given case? Do you feel this is a sufficient guide?

Colonel HOLLAND. I think it is a very indefinite guide. I personally wracked my brain trying to offer a suggestion that would be more definite and certain. I was unable to do so.

The relief proposed in this bill, as I understand it, and the relief heretofore granted under the First War Powers Act, did not contemplate payments of any legal claim. For legal claims they have their remedies. It covers equitable relief.

Now, "equity" is a term which is more or less relative, and is somewhat hard to define. I do not think "manifest injustice" is any more up in the air than "equity" is, and I think it would depend on all the facts and circumstances in any particular case, whether you gave him bare costs, brought him out of the hole, paid him a profit. I think it would depend on the particular facts and the particular case. I think we so construed it in the First War Powers Act.

The CHAIRMAN. Would you change the "manifest injustice" to "manifest inequity"?

Colonel HOLLAND. I do not know that it would make too much difference, Senator. I do feel that you cannot lay down a definite detailed set of rules in a case like this. This is personal, of course.

Mr. WEITZEL. Do you feel, though, in leaving this to the individual departments to be administered under general regulations of the President, that the same effect would be given to that term in the various departments?

Colonel HOLLAND. I would rather have Colonel Brannon speak along that particular line.

The CHAIRMAN. Colonel, do you care to answer that question?

Colonel BRANNON. Mr. Chairman, I think the feeling of the War Department when we submitted our report was that the language is very indefinite, and it might lead to a large volume of claims and go beyond the scope of the bill. We felt that it was indefinite and would be difficult to administer.

The CHAIRMAN. Have you any suggestions to make?

Colonel BRANNON. No, sir. I am in the same position as Colonel Holland. As a matter of fact, we both worked in the preparation of the draft of the report submitted to the Secretary. We both discussed that problem and we could not arrive at any language which satisfied us that it would include all the proper cases and exclude the improper cases.

Colonel HOLLAND. I will say that so far as the War Department is concerned, we feel we could sort of dispense rather than indispense with justice in any case referred to our Department, but we, of course, do not know that we would apply the same criteria applied by the Navy. In other words, the point raised by the General Accounting is very good. I do not know the answer.

Mr. WEITZEL. I do not know the answer, either, but I think further study might give a little light.

The CHAIRMAN. If you gentlemen do not know the answer, how do you expect the Senate to know the answer.

Mr. WEITZEL. We are trying to arrive at the answer. One of the officials of the General Accounting Office explained his view that this was a blanket authority to the Government departments to write blank checks; and I feel that some safeguard should be placed on that blanket authority.

Colonel HOLLAND. Of course, it is no more blanket authority than under the First War Powers Act.

Mr. WEITZEL. Except that in this case the standard is much more indefinite and much more vague and not tied down to the prosecution of the war.

Colonel HOLLAND. There is this, if I might interject: a number of these cases were pending before our committee on VJ-day in which the contractor could have been either granted an award or turned down within a matter of days. Under this new law, if there is a new law, those particular cases would have an answer within a matter of days or a very few weeks.

The CHAIRMAN. In other words, they would not be cut off with "the war having now ended, our power is ended?"

Colonel HOLLAND. No. We would have all the same documents and the same evidence and that would apply.

Mr. WEITZEL. That is true, but two or three of these cases are claims on which the department has been worrying for 2 or 3 years, as to how they should solve them. It may be that they could go ahead in a week after the bill passed and determine them, but it has taken quite a good deal of time up to the present.

Colonel HOLLAND. I might say this, in clarification: That the authority was delegated to the various technical services and Army Service Forces and Army Air Forces, to handle these types of cases up to certain monetary limits. Beyond that limit they had to come up to the committee. Frequently all of the evidence was not obtained. Frequently it took a long period of time to get detailed evidence. Say that when it reached us we found there was something we had to have. It is true that years elapsed in some of these cases, but once they did get up to us and did have the available evidence, I do not think anybody complained of undue delay there.

Mr. SULLIVAN. May I say something at this point?

The CHAIRMAN. Yes, Mr. Sullivan.

Mr. SULLIVAN. May I say this to the representative of the General Accounting Office, to satisfy any objection that that Office might feel regarding these regulations. I believe they are known as procurement regulations of the War Department. They have been in force and effect under the First War Powers Act. Maybe not all of them were in force and effect from the beginning of the enactment of the act, but the War Department has formulated and made uniform a set of regulations that the contractors have an opportunity to familiarize themselves with. And I would presume that the bill as now drawn which provides that the President would promulgate regulations, in all reason would promulgate the same regulations that are now and have been in effect under the First War Powers Act, except as they might need to be modified to give force and effect to this bill; and if that were done, we would not have to wait until a new set of regulations could be drafted, circulated through all the departments, and that is a big bugaboo to the people on the verge of being put out of business, the delay that would come about in any sort of new arrangement.

Senator Lucas introduced this bill October 14. We did not get the reports from the departments until a short time ago, about 4½ months. I have forgotten the exact date. If we have got to wait until new regulations have been sent to all the departments and everybody agrees on it, and then start in and file a new claim under the new regulations and get up everything that conforms with those regulations, why, we have just an interminable thing, and if the committee thought and the General Accounting Office felt that they would be satisfied, I do not know why that first page of the bill could not say—

any regulations heretofore promulgated except insofar as altered to give effect to this Act.

And I would like for the General Accounting Office to take that practical situation into consideration.

Mr. WEITZEL. I would only say I would be reluctant to try to write a regulation covering this term "manifest injustice" and I am afraid it would take considerable time to work out a plan which would be agreeable to the major agencies which could be sent to the President.

I might ask the colonel if it is true that the War Department procurement regulations were substantially modified and made less lenient during the course of the war?

Colonel HOLLAND. Originally I believe they created perhaps an erroneous impression among contractors that there was a "gravy

train" they could get aboard. I think we modified them and tightened them up to large degree.

Mr. WEITZEL. Which shows it takes a little while to get those to work.

Colonel HOLLAND. Undoubtedly so. This was something that had to be worked out, because it was a blank check in the hands of the Government, and we had to protect it.

Mr. WEITZEL. Now you are handed another blank check in the form of "manifest injustice" which I believe would take some time to work out in arriving at the meaning.

The CHAIRMAN. Are we not still negotiating contracts?

Colonel HOLLAND. Yes, sir.

Mr. WEITZEL. That is true.

The CHAIRMAN. Under the War Powers Act?

Colonel HOLLAND. Yes sir.,

The CHAIRMAN. How do we negotiate contracts now after the war has terminated by that same authority that says, "the war terminated, therefore, we cannot do anything for you on your contract"?

Colonel HOLLAND. We are negotiating contracts under the First War Powers Act and Public Act 703 of July 2, 1940. We are not too sure of our ground on the First War Powers Act, so we are going back to the other act as well. In addition, we feel the First War Powers Act may be applicable. That is because it is for continuing production necessary in the winding up of military affairs, which has become necessary since VJ-day.

The CHAIRMAN. And you cannot apply that same reasoning?

Colonel HOLLAND. The War Department does not feel so, sir.

Mr. WEITZEL. Where the contract has already been completed.

Colonel HOLLAND. No. That we cannot give relief now under the terms of the First War Powers Act based upon a finding that the granting of this relief now will facilitate prosecution of the war.

Mr. WEITZEL. I do not want to take up the time of the committee unnecessarily, but I would like to ask about this provision that the section is not to be applicable to cases submitted under section 201 of the First War Powers Act which have been finally disposed of under such section on their merits prior to August 14, 1945, whether there would be any difficulty interpreting that term "finally disposed of upon their merits"?

Colonel HOLLAND. First, let me say that this committee of which I am chairman is appointed by authority of the Undersecretary of War through a delegation of certain of his powers to the Director of Current Procurement in the Army Service Forces. Our committee is an advisory committee and makes recommendations to either the Undersecretary of War or to his special representative, who thereupon takes his action in either approving or disapproving our recommendation. We feel that a case has been finally disposed of when it has gone all the way it can go in the War Department.

Mr. WEITZEL. As to its merits, would you say if the Department granted partial relief that it has been disposed of in regard to its merits?

Colonel HOLLAND. We feel that our committee proceedings in these cases and our endorsement to the papers involved are definitely clear

in each case of action which has been taken on the merits of the entire claim or not.

Mr. Weitzel. Suppose a claimant claims $500,000 and you feel $300,000 would keep him in business, and awarded him that; would that be final?

Colonel Holland. Yes. Because regardless of how the money was lost we would not want to pay him any more than necessary to keep him in business. If it were equity to him then we would have to determine how much would be equitable for him.

Mr. Weitzel. That being the case, would that preclude determination of some cases decided on the merits?

Colonel Holland. I think it would be precluding to all.

Mr. Weitzel. Finally, would the colonel have any objection to incorporating some safeguards preventing payment under one contract where profits have been made under another? Or perhaps integrate this down to renegotiation. For instance, if a contractor lost $1,000,000 and would have had it taken away by renegotiation, should it be paid now?

Colonel Holland. We have always acted on the theory that if his loss has been considered under renegotiation and it would have been taken away from him anyway, we certainly have not granted relief, and would not.

Mr. Weitzel. Would you object to putting that in this bill?

Colonel Holland. You understand I am not sponsoring this bill.

Mr. Weitzel. Of course not. I am only asking a personal opinion, because there are these things we feel are very important in this bill.

The Chairman. The idea is that I am taking all of this as advice.

Colonel Holland. Surely.

The Chairman. And it is not binding on anybody. We can talk these things out. We have to talk them out in the committee.

Colonel Holland. I think perhaps such a thing might be given careful consideration.

Mr. Weitzel. I am just trying to see if something cannot be done to put safeguards in the bill without affecting any relief which the committee feels should be granted against bona fide loss in performing these contracts.

Colonel Holland. May I make one statement here?

The Chairman. Surely.

Colonel Holland. Earlier I stated that I consulted with legislative counsel. I would like to make it clear that I did not so consult at the direction of the War Department or as a representative of the War Department, but as an individual thing at Senator Lucas' request.

The Chairman. That is all right. Thank you, Colonel, very much.

STATEMENT OF COL. E. M. BRANNON, JUDGE ADVOCATE GENERAL'S DEPARTMENT, WAR DEPARTMENT

Colonel Brannon. My name is Col. E. M. Brannon, Judge Advocate General's Department, and Procurement Judge Advocate in the War Department.

Mr. Chairman, some question has been raised as to the position of the War Department in connection with the phrase "facilitating the prosecution of the war." I want to take just a moment to explain our position.

When the First War Powers Act was passed we realized that Congress had granted very much broader authority to the War Department than it ever had before. Ordinarily, of course, Government agencies have no authority to modify a contract merely because of hardship. Usually there must be some adequate consideration moving to the Government.

When we got this authority the question arose as to how far we could go under it. After some study the War Department drafted a proposed directive as to the way we expected to act under this new law. Under date of July 13, 1942, that directive was submitted to the Attorney General for an opinion as to whether it was in accordance with the provisions of the act.

On August 29, 1942, the Attorney General issued an opinion that is volume 40, opinion number 53, Opinions of the Attorney General. In that opinion there are one or two points raised.

In the course of that opinion the Attorney General said [reading]:

> By Executive Order No. 9001, the President has authorized you, among other things, to make amendments or modifications whenever—in the words of the order—"in the judgment of the War Department * * * the prosecution of the war is thereby facilitated." In my opinion, this requirement of the Executive Order is satisfied by a judgment in good faith that the prosecution of the war will be facilitated by a modification or amendment.

And he stated further:

> The directive submitted and the examples annexed plainly do not involve the award of any gratuity to the contractor, inasmuch as the proposed modifications or amendments are to be based on findings that the prosecution of the war will thereby be facilitated, thus contemplating a clear benefit to the United States.

In other words, facilitating the prosecution of the war would take the place of consideration which ordinarily would be necessary in order to justify these amendments or modifications.

I want to correct one thing. On VJ-day the war did not automatically terminate. The power under the First War Powers Act and 9001 did not automatically terminate. However, the war situation changed so much that in very few cases were we able to make this honest conclusion that the relief in a particular case would facilitate the prosecution of the war.

We realized there might be exceptional cases. Perhaps it would be for the necessity of supporting troops overseas. We might have to make contracts where we would get supplies necessary in this period. But the over-all picture was such that it was very unusual.

Colonel HOLLAND. I concur with that statement.

The CHAIRMAN. Thank you very much. Now, Mr. Neale, General Counsel's Office of the Navy.

STATEMENT OF J. HENRY NEALE, GENERAL COUNSEL FOR THE NAVY DEPARTMENT

The CHAIRMAN. You may state your name.

Mr. NEALE. My name is J. Henry Neale. I am general counsel for the Department of the Navy.

The CHAIRMAN. You may proceed.

Mr. NEALE. Mr. Chairman, I appreciate the opportunity to be here, and especially since it affords me an opportunity to clarify the Navy's

position with respect to the so-called War Powers Act amendments and this proposed legislation.

It seems there has been a misapprehension on the part of some of the previous witnesses as to the Navy's position on this proposed bill. I think that is undoubtedly our fault because of the fact that the letter of comment which was submitted to the chairman of the committee did not entirely comprehend the purposes of this proposed legislation.

It appears from the witnesses here today and yesterday that there are 3 or 4 contractors who had applications pending with the Army at the time of the Japanese surrender, and that thereafter the position was taken by the Army that because of the Japanese surrender, relief could not be granted and that thereupon Senator Lucas, working it seems in conjunction with at least some of the men of the War Department, personally drafted this legislation so that the Army was familiar with it and the Navy simply got it as a proposed bill introduced with request for comment. And I might interpolate here with respect to the delay on this matter that we submitted our comments to the Bureau of Budget in December and only received approval of the Bureau of Budget in March, so that there was about 3 months' delay at that time.

The author of the letter of comment of the bill for the Navy, as I say, not knowing the background of the legislation, thought of it as and placed incorrect emphasis perhaps on the language in the proposed bill "as dealing with persons who have furnished supplies or services to the Government."

The letter then pointed out that section 17 of the Contract Settlement Act of 1944, afforded adequate relief for persons supplying services and that therefore this bill was not needed for that purpose.

It did not address itself to the real question, which is affording relief to contractors who might have got relief afterward if the war had been continued. Fortunately, the war ended; but unfortunately for these contractors, because perhaps they would otherwise have got relief shortly after that.

The attitude of the Navy is precisely that of the Army with respect to the interpretation of the First War Powers Act. We have not granted any relief in any cases since the Japanese surrender. I have checked back, and following August 15 we have had before us for consideration only 8 cases, and in every one of those the application was denied, but denied on the merits in that even if the war had been continued it would not have been proper on the facts given to have given relief.

For instance, in one of the cases a contractor wanted $21.50 additional amount by reason of something that happened in the course of his contract.

Another contractor, a very large industrial corporation, wanted $96.79 additional amount. We would have denied those if the war had been going on, and we denied them after VJ-day on the merits.

We had several other cases, larger amounts, which had been pending, and those we considered in the regular way and denied.

I think we have only had one case which was submitted to us after VJ–day which was not pending on VJ-day, and that one we also considered on the facts and denied.

The CHAIRMAN. I do not understand that the idea of the bill is to direct payment of something that was turned down on its merits.

Mr. NEALE. I quite understand, Senator.

The CHAIRMAN. I do not think the Congress of the United States will want to inject itself into a judgment on the merits, on the facts. I think the Congress, if it will want to do anything, will want to so clarify the law that as to the just and equitable case that seems to be precluded from judgment by reason of the condition that has arisen, the condition will be removed so that its merits may be considered. I think that is all the Congress will want to do.

Mr. NEALE. As to that, sir, we are in full sympathy, but unfortunately I am afraid that the enactment of this legislation—which would apparently affect only three cases which would come within that general category, none in the Navy and only three we know of in the Army—would be just another example that "hard cases make bad law."

The CHAIRMAN. I do not know about that. We have had a number of cases here.

Mr. NEALE. Yes, sir.

The CHAIRMAN. We have had a number of cases. That is more than three, and it does seem to me that those cases, and others like them, may present a situation where if the merits are as stated some opportunity for relief on the merits should be granted, in view of the construction that has been placed upon existing law.

Mr. NEALE. Very well. I will address myself to that particular question.

The viewpoint of the Navy, and also I think of the Army, has been that section 201 of the First War Powers Act was not enacted as an aid or grant-in-aid to contractors. It was enacted to help the Government procure the goods to fight the war, and it was intended only for the prosecution of the war, and not for the granting of relief.

We have had a number of cases where contractors have through bad judgment on their own part or through unfortunate circumstances unforeseeable at the time lost money but yet we could not give them relief because in our opinion they did not conform to the standards which we have applied during the war. The contractor could only get relief if had a cause of action against the Government for some action on the Government's part. If it was something which was not at all the responsibility of the Government, just an unfortunate circumstance which arose during the performance of the contract, he was afforded the relief of a private bill, and there have been a number of private bills introduced and passed giving relief in that case.

The CHAIRMAN. A private bill takes care of one case only.

Mr. NEALE. That is correct.

The CHAIRMAN. There may be thousands of cases where no private bill is introduced or ever will be introduced. That will put these companies into bankruptcy or out of business. It is always an element of justice that we try to apply to those who aided us in the way these companies did in the war.

Let us take the woolen mill we had here yesterday. Naturally, if the facts are as stated, they impress you very much. And they rendered valuable service to the Government. They were called on to render that service, but by a technical interpretation they were denied the relief that to me, speaking as an individual, would have appeared justifiable.

Take the road outfit, to carry on a contract, accepting that the roads were not constructed. It impresses me very much that due to certain

conditions, if the facts were as stated, they would be entitled to equitable relief, fair relief.

All the Governments wants to do is deal fairly with those who aided the Government in its great struggle.

Mr. NEALE. I think that is correct, sir. And that is what we have tried to do in accordance with the provisions of law as laid down by Congress in the First War Powers Act and other legislation.

May I review the history of the action of the Navy under section 201 of the First War Powers Act with respect to granting relief by payment of additional money to contractors without consideration, that is, with nothing being received by the Government.

Section 201 provides that in accordance with regulations prescribed by the President the various departments may make amendments or modifications of contracts whenever he deems such action would facilitate the prosecution of the war.

The Executive Order 9001, which was issued immediately after the passage of the First War Powers Act, provided, as Colonel Holland quoted, that the War, Navy, and Maritime Commission [reading]:

> may modify or amend or settle claims under contracts whenever in the judgment of those departments the prosecution of the war was thereby facilitated.

The CHAIRMAN. And you say it all turned on the prosecution of the war, or facilitation of the prosecution of the war. And then they said:

> The war is over, so this will not now facilitate the prosecution of the war.

Mr. NEALE. That is right.

The CHAIRMAN. Of course, speaking now just by putting my horse sense to it, as poor as it seems to me, that was a very technical construction.

Mr. NEALE. I am afraid that if any disbursing officer made a payment after that time the General Accounting Office might have taken exception to the payment and surcharged the disbursing officer personally for the amount of the payment.

Mr. WEITZEL. If I might interject, might I ask Mr. Neale whether it would be the Navy's opinion, independent of the General Accounting Office, that this action had been in the prosecution of the war?

Mr. NEALE. Yes, sir. As Colonel Brannon pointed out, it is not our view that on VJ-day all authority ceased.

We have a particular case. Assume, for instance, a contractor engaged in the repair of ships on the west coast. Shipping is very short. We need it to get the boys back as soon as we can, and so forth. And if we had a case of where that contractor needed relief and we had to keep him going we would still make payment; and I think the General Accounting Office would not question that action.

But take a contractor making something no longer needed. The contract is terminated. The plant is closed down. I do not see how we could justify payment at that time as to aiding the prosecution of the war.

The CHAIRMAN. What about the overcoat case? They said, "the troops will have to go into action without proper equipment; therefore, you must go on with this contract, even though we recognize you are having a loss."

Mr. NEALE. That contractor should have had relief before VJ-day, and I think I would have applied a little horse sense and dated the thing back.

The CHAIRMAN. I think I would go along with you.

Mr. NEALE. Suppose it is our own fault, our own red tape that we have held the matter for a long period of time; that is one way of getting relief. I do not say we ever have done that.

Mr. SEVERINGHAUS. Is that the reason the Navy does not have more cases?

Mr. NEALE. No.

Mr. SEVERINGHAUS. I think it is. I know of four or five waiting to file private bills in case this bill does not include them in it. Some are not here today because they could not afford the trip to come up to Washington. There are a good many more than three cases.

Mr. NEALE. Our records only show eight cases which were acted upon after VJ-day, and of them five were decided August 18th before the actual signing of the surrender, and of those, as I pointed out, there were two or three small ones.

According to our records, we had a total of some 300 to 400 applications for War Powers Act relief. We granted approximately 45 or 50. Apart from "mistake cases," where the increase was called for by reason of mutual and apparent mistaken on the part of the contracting officer, in that the written contract did not embody the deal as the parties negotiated across the table. We have taken care of those.

But on the actual case of where a contractor lost money and had to come in for relief, we had, as I say, about 400 all told, and we granted only about 45 to 50, according to my records.

The CHAIRMAN. Those were granted or denied on the merits?

Mr. NEALE. Yes, sir. The test we have always applied was threefold. First, the materials had to be needed by the Government. Secondly, that we could not get the materials we needed in that way except from this particular contract. If we could get it from some other source, it was too bad. And, third, the contractor had to have this relief and get the money or otherwise he could not keep in business.

Now, those rules were laid down first in September 1942, and I would like to put into the record paragraphs 4 to 9, inclusive, of a directive of the Secretary dated September 16, 1942.

The CHAIRMAN. I think you had better leave that for the Reporter.

Mr. NEALE. Yes.

(The document referred to is as follows:)

NAVY DEPARTMENT,
Washington, September 16, 1942.

PLD/RGMcC: mlp
SO 9171022
From: The Secretary of the Navy.
To: All Bureaus, Boards, and Offices of the Navy Department.
The Commandant U. S. Marine Corps.
The Commandant, U. S. Coast Guard.
Subjects: (I) Modifications, Amendments, and Settlements of Contracts and Agreements pursuant to the First War Powers Act and Executive Order No. 9001; and
(II) Determinations of Fact under Disputes Clauses and Similar Clauses in Navy Contracts, and Settlements in Accordance Therewith.
References: (a) UnderSecNav ltr PM 140 EGK, PM 701 1096, dated 1 July 1942.
(b) UnderSecNav ltr PM 140 EGK, PM 706 1029, dated 1 July 1942.
(c) SecNav ltr QW20/L4-3 (411228), PLD/HSH: jhf, dated December 28, 1941.
Enclosure: (A) Ltr dated Oct. 25 1939, to SecNav from the Attorney General.

1. References (a) and (b) are hereby rescinded.

2. The purpose of this directive is to prescribe administrative procedures for the orderly consideration of the demands of Navy Department contractors, and to call the attention of Navy contracting officers to their duties and powers with respect to two phases of contract and procurement work, i. e., (I) modifications, amendments, and settlements of contracts and agreements under the First War Powers Act, 1941, and Executive Order No. 9001 and (II) determinations of fact under Disputes clauses and other similar clauses in Navy contracts and settlements in accordance therewith. These two phases of such work raise similar problems and yet basically are quite different and require different approaches and procedures. Thus, when disputes and differences of opinion concerning questions of fact are clearly governed by the provisions of the contract or may be decided under the Disputes clause, there should, in the first instance, be no occasion in the disposition of such disputes or differences of opinion for the exercise of powers under the First War Powers Act and Executive Order No. 9001. All contentions or proposals of contractors or of the Navy Department which cannot be disposed of in accordance with the express or implied provisions of a Navy contract (including contentions or proposals the disposition of which cannot be satisfactorily made under the Disputes clause of the contract, and applications for the change, alteration or expansion of contract terms) must be disposed of, if at all, through the exercise of powers (which are ample) conferred under the First War Powers Act and Executive Order No. 9001. The contracting officers shall expedite to the fullest extent all action taken under the procedures set forth in this directive.

3. Paragraphs 4 to 9, inclusive, deal with (I) *Modifications, Amendments, and Settlements of Contracts and Agreements pursuant to the First War Powers Act, 1941, and Executive Order No. 9001.*

4. The attention of all contracting officers is called to the provisions of paragraph (3) of Executive Order No. 9001, promulgated pursuant to the First War Powers Act, 1941:

> The War Department, the Navy Department, and the United States Maritime Commission may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance, progress, and other payments upon such contracts of any percentum of the contract price, and may enter into agreements with contractors and/or obligors, modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds, whenever, in the judgment of the War Department, the Navy Department, or the United States Maritime Commission, respectively, the prosecution of the war is thereby facilitated. Amendments and modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making of or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract, or the amendments or modifications thereof.

5. All Navy contracting officers have been authorized by reference (c), and are hereby authorized, to exercise the war powers conferred by Executive Order No. 9001, with respect to modifications, amendments, and settlements.

6. Some contracting officers are apparently reluctant to invoke the power to modify or amend a particular contract, or settle a claim with respect thereto, as delegated to them by the Secretary of the Navy, because of doubt whether such modification, amendment, or settlement will facilitate the prosecution of the war. The contracting officers, whenever it is their judgment that a modification, amendment, or settlement with respect to a Navy contract will facilitate the prosecution of the war, should not hesitate to effect such modification, amendment, or settlement.

7. It must be emphasized that under Executive Order No. 9001 only the Navy contracting officers have been delegated the authority to effect modifications, amendments, and settlements with respect to Navy contracts, and that in no event shall questions regarding such modifications, amendments, and settlements be referred to agencies outside of the Navy Department.

8. Hereafter, the following procedure shall be observed with respect to modifications, amendments, and settlements made pursuant to the authority delegated to contracting officers in the exercise of powers under the First War Powers Act and Executive Order 9001:

> (a) Whenever any request for modifications, amendment, or settlement is made by the contractor, the contracting officer shall make such inquiry

or investigation as may be necessary to enable him to determine whether a modification, amendment, or settlement will in his judgment facilitate the prosecution of the war. The contracting officer may confer and negotiate with the contractor, may suggest alternatives, and may take all other steps which will aid in reaching a modification, amendment, or settlement which will facilitate the prosecution of the war. In difficult cases, the contracting officer in the field may submit the matter of modification, amendment, or settlement to the Chief of the Bureau of Supplies and Accounts for determination or for advice and recommendation.

(b) If the contractor and the contracting officer agree upon a modification, amendment, or settlement, the terms thereof shall be included in a supplemental written contract or in a letter approved in writing by the contractor, which shall specify that in the judgment of the contracting officer the execution of such supplemental contract or letter will facilitate the prosecution of the war.

9. When the contracting officer is in the field, the foregoing procedure shall not apply in the case of a modification, amendment, or settlement with respect to a contract where the work has been completed or final payment made. In such cases, the contracting officer shall transmit the request and his recommendation to the Chief of the Bureau of Supplies and Accounts.

10. Paragraphs 11 to 14, inclusive, deal with (II) *Determinations of Fact under Disputes Clauses in Navy Contracts and Settlements in Accordance Therewith.*

11. The following Disputes clause shall hereafter be inserted in all contracts other than NOd contracts executed by the Navy Department:

"ARTICLE —. Disputes.—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer, subject to written appeal by the contractor within thirty (30) days to the head of the Department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the contractor shall diligently proceed with performance."

In any such clause, the words "Secretary of the Navy" may be substituted for "head of the Department concerned."

In NOd contracts, the above clause shall be inserted with the words "contracting officer" changed to "Chief of the Bureau of _____ [Bureau having technical cognizance of the subject matter of the contract]."

12. Certain disputed questions under contracts have been referred by contracting officers to the Compensation Board for decision prior to any consideration or decision thereupon by the contracting officers. The Compensation Board will not take action upon a disputed question under a contract in the first instance. Under the Disputes clause and other similar clauses in Navy contracts, the contracting officers not only have full authority, but they are obligated by the provisions of such clauses, to make the decisions upon disputes concerning questions of fact.

13. Enclosure (A) emphasized the necessity of having contracting officers make findings of fact and decisions upon any disputed questions and of transmitting such findings and decisions directly to the contractor. In Enclosure (A), the Attorney General stated:

"I also understand that some contracting officers or heads of departments have transmitted disputes arising under these articles, or their findings or decisions with respect to such disputes, to the General Accounting Office, not because of any instructions from that office but under the mistaken impression that the requirement of these articles would be satisfied thereby. These practices do not protect the interests of the United States."

14. The following procedure for the disposition of disputes concerning questions of fact arising under contracts containing the provisions set forth in paragraph 11 above, or provisions similar thereto, must be followed:

(a) Whenever any such dispute arises, the contracting officer shall request the contractor to furnish a full statement of the pertinent facts and the reasons in support of the contractor's contention, with reference to the contract provisions relied upon in support of such contention.

(b) The contracting officer shall in each instance decide the dispute and furnish directly to the contractor a statement in writing of his "decision", together with "findings of fact". The decision of the contracting officer must not, however, be in conflict with any provision of the contract.

(c) A contracting officer in the field may, before reaching a decision, submit disputes and questions theron to the Chief of the Bureau of Supplies

and Accounts for advice and recommendation. It is, however, the responsibility of the contracting officer to exercise his own judgment in making his own findings of fact and in reaching his decision.

(d) If the contractor determines to appeal to the Secretary of the Navy from a decision of the contracting officer, the contracting officer should request that the documents relative to the appeal be delivered to him for transmission.

(e) The contracting officer shall transmit the documents relative to the appeal including a copy of the statement of the contractor referred to in (a) above and a copy of the contracting officer's findings of fact and decision referred to in (b) above, with all other pertinent information, to the Compensation Board.

(f) After a decision has been reached upon the appeal by the Secretary of the Navy or his duly authorized representative, the contracting officer, if not in the field, will be informed of the decision and as to any action which should be taken in regard thereto. If the contracting officer is in the field, the Chief of the Bureau of Supplies and Accounts will be informed of the decision and any instructions in regard thereto. The contracting officer, if not in the field, or the Chief of the Bureau of Supplies and Accounts, as the case may be, shall be responsible for the transmission to the contractor of the decision and for the taking of any necessary action.

15. If the contracting officer finds that the contractor's contentions have general merit, but the contracting officer's decision under the terms of the contract is adverse to the contractor, the contracting officer may then consider whether a modification, amendment, or settlement of the contract is justified on the ground that, irrespective of the rights of the contractor under the terms of the contract, relief by way of modification, amendment, or settlement under the First War Powers Act, 1941, and Executive Order No. 9001 will facilitate the prosecution of the war. In such event, the procedures set forth in paragraph 8 must be adhered to.

FORRESTAL, *Acting.*

CC: All Supships
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[Enclosure A]

DEPARTMENT OF JUSTICE,
Washington, D. C., October 25, 1939.

The Honorable the SECRETARY OF THE NAVY,
Washington, D. C.

SIR: May I call to your attention a series of recent decisions by the Court of Claims, which have established an important principle with respect to the duties of contracting officers, and of heads of departments charged with the duty of ruling upon appeals from decisions of contracting officers in disputes arising out of Government contracts.

Articles 9 and 15, respectively, of the standard form of Government contract (approved November 19, 1926) provide in part as follows:

> * * * The contractor shall within 10 days from the beginning of any such delay notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and the extent of the delay, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal within 30 days, by the contractor to the head of the Department concerned, whose decision on such appeal as to the facts of delay shall be final and conclusive on the parties hereto. * * * (art. 9).
>
> * * * All disputes concerning questions of fact arising under this contract shall be decided by the contracting officer or his duly authorized representative, subject to written appeal by the contractor within 30 days to the head of the Department concerned, whose decision shall be final and conclusive upon the parties thereto as to such questions of fact. * * * (art. 15).

It has long been established that the findings of contracting officers, and the decisions on appeal by heads of departments, are conclusive, and that the Court of Claims will not set aside these findings, unless there is proof of fraud, or of such gross error as to impute bad faith. However, recent decisions by the

Court of Claims have established that these findings are conclusive only if they are actually made by the officer designated by the contract to make the finding, and if they are communicated by him to the contractor.

It is my understanding that, in some cases, contracting officers or heads of departments have failed to make the findings or decisions called for under articles 9 and 15 of the standard form of Government contract, or have failed to communicate their findings or decisions to the contractor. (I also understand that some contracting officers or heads of departments have transmitted disputes arising under these articles, or their findings or decisions with respect to such disputes, to the General Accounting Office, not because of any instructions from that office but under the mistaken impression that the requirements of these articles would be satisfied thereby. These practices do not protect the interests of the United States.) The findings of fact must be made by the contracting officer, the decision on appeal must be made by the head of the department, and the findings or decision, as the case may be, should in all cases be communicated directly to the contractor.

This letter, of course, does not in any way relate to other matters arising out of contracts which departments may submit or are required to submit to the General Accounting Office.

This is a matter of considerable importance in defending suits against the Government arising out of these contracts. It is, therefore, respectfully suggested that you issue instructions requiring that the provisions of articles 9 and 15 of the standard form of Government contract be carefully followed, and that the decisions of contracting officers in your Department and your own decisions on appeal shall be communicated directly to the contractor.

I attach hereto a memorandum referring to and quoting from certain decisions of the Supreme Court and the Court of Claims touching the matter in question.

Respectfully,

FRANCIS M. SHEA,
Assistant Attorney General
(For the Attorney General).

MEMORANDUM ON DECISIONS RELATING TO THE COMMUNICATION OF FINDINGS BY CONTRACTING OFFICERS TO CONTRACTORS

The Supreme Court of the United States in the case of *United States* v. *Mason & Hanger Co.*, 260 U. S. 323, 325, 326 (1922), held that such provisions as Article 9 and Article 15 of the Standard Form of Government Contract are valid, and that the decisions and settlements and payments made thereunder are binding and not subject to review by the Courts. That Court said: "Over the effect of these the Comptroller of the Treasury has no power. They were the acts and duty of the officer in charge, in the expression of which there was no ambiguity, and were, therefore, conclusive in effect."

The finality of the decision of the contracting officer is further emphasized by the following excerpts from the decision of the Court of Claims in the case of *Albina Marine Iron Works* v. *United States*, 79 C. Cls. 714, 719, 720 (1934):

"The contracting officer, upon the reports and recommendation of his subordinates, found as a fact that the causes of the delays were not due to the fault or negligence of the contractor and were unforeseeable and remitted liquidated damages on each vessel for the number of days required for the new plates. When the contractor applied for final settlement, the Comptroller General refused to acquiesce in the findings of fact of the officer in the remission of liquidated damages and assessed against the contractor the per diem sum of $40 for each vessel in the amount of $9,240.

"The Comptroller General was not a party to the contract. It was the duty of the contracting officer, under the terms of the clause of the contract above set out, to ascertain the facts and the extent of the delay. The contract stated that his findings of fact should be final and conclusive on the parties. The contracting officer did perform his duties under the terms of this clause of the contract and found that the contractor was not to be charged with the 77 days delay due to the furnishing of the new plates, and this finding by the contracting officer is not reviewable by the Comptroller General or the Courts.

** * * The Court cannot go behind the decision of the contracting officer where the contract makes him the final arbiter of the facts of the case unless there has been fraud or such gross error which, in effect, would imply bad faith. The cases in this court and the Supreme Court so holding are numerous. * * **

"The action of the Comptroller General in denying plaintiff the relief granted by the contracting officer was without warrant of law." [Emphasis ours.]

In the case of *Karno-Smith Co.* v. *United States*, 84 C. Cls. 110, 124 (1936), the Court of Claims said:

"A claim was made for the reimbursement of this additional expense, investigated by the supervising architect *and referred by him to the Comptroller General, who disallowed it. It was the duty of the supervising architect under the terms of the contract as representative of the contracting officer to make a decision on the merits of the claim. The Comptroller General was not a party to the contract and his decision amounted to a nullity. Where the contracting officer fails to perform the duty imposed upon him by the contract, it is the duty of the Court to perform this service and pass upon the legal rights of the plaintiff.*" [Emphasis ours.]

The following excerpts from the decision of the Court of Claims in the case of *Sun Shipbuilding Company* v. *United States*, 76 C. Cls. 154, 182, 185, 186, 187 (1932) are especially in point:

"During the execution of the contract the contracting officer notified plaintiff that all questions as to what was extra work, remission of damages for delays caused by the defendant, and assessment of liquidated damages *must be submitted to the Comptroller General for final decision. The contractor protested against presenting its claims to the Comptroller.* * * * [Emphasis ours.]

"The record discloses no decisions were made by the chief of engineers, * * *. On the contrary, the record clearly discloses that the contracting officer was notified by the Comptroller General that all questions of payment for extra work, what was extra work under the contract, assessment of liquidated damages, and the remission of damages by reason of delays caused by the Government were matters beyond the control and judgment of the contracting officer and were to be submitted to him for final decision. The record discloses the acquiescence by the contracting officer in the demand of the Comptroller General and notification by the contracting officer to the contractor that that course should be followed in all claims made by it. The terms of the contract were plain and should have been folowed by the contracting officer. The Comptroller General had no authority under the contract to act in any way. The contracting officer in his testimony admits he was fearful of but not dominated by the Comptroller General and assigns this fear as an excuse for his failure to pass on these questions and his subservient assignment of his plain duty to the Comptroller. * * *

"The contractor was entitled to a decision on these matters of delay and to the impartial, honest, and uninfluenced opinion and decision of the contracting officer and the chief of engineers. The record discloses it was forced by the contracting officer to submit its claims to a third party who was not mentioned in the contract and whose decision is of no binding effect."

The following excerpt from the recent decision of the Court of Claims in the *Phoenix Bridge Company* case, 85, C. Cls. 603, 629 (1937) is also in point:

"With reference to the finality of the decision of the contracting officer upon which counsel for defendant chiefly rely in this case, the facts clearly establish that the contracting officer did not make an independent decision in the free exercise of his own judgment as was clearly contemplated by the contract. Instead, he first recommended to the Comptroller General partly in favor of and partly against the contractor and, later, after further protest and argument by plaintiff against the opinion of the Comptroller General, which was the only ruling plaintiff ever received, the contracting officer recommended wholly in favor of plaintiff on the questions of delay upon which its suit for liquidated damages is based. In these circumstances, it is clear that the action of the contracting officer was not conclusive upon the plaintiff and upon the court. A decision by the Comptroller General is not conclusive under the contract. *Sun Shipbuilding & Dry Dock Co.* v. *United States*, 76 C. Cls. 154. In *United States* v. *North American Commercial Co.*, 74 Fed. 145, 149, it was held that where a contractor reposes upon the good faith or discretion of some public officer representing the Government there is an implied obligation upon the officer that he will not act arbitrarily or capriciously but will exercise an honest judgment and that 'the party who has agreed to be bound by that judgment is entitled to have it exercised in good faith by the officer nominated and cannot be bound by the substituted judgment of another authority.' * * *"

Mr. NEALE. Following the issuance of that directive we found that the General Accounting Office was raising the question all over again. We had a number of cases where contracting officers acting under that

authority granted increases in contract price. Some 6 months or thereafter the voucher would reach General Accounting, and they would want to go into the matter all over again, stating that while it was true we had authority to increase contract price in aiding the prosecution of the war, nevertheless they had the responsibility themselves of determining that the action was proper, that they would not take the certificate, and so forth. That meant there was no finality to the decisions. No one would know where they would stand. Disbursing officers would be in danger of having an account surcharged and they did not want to make the payment.

It resulted in quite a few conferences between my predecessor, Mr. Hensel, who later became the Assistant Secretary of the Navy and the General Accounting Office over there, and the upshot of it was the promulgation of a new directive by the Navy Department on July 7, 1943, which I would like to put into the record also.

The CHAIRMAN. Very well.

(The document referred to is as follows:)

NAVY DEPARTMENT,
Washington, July 7, 1943.

From: The Secretary of the Navy.
To: All Bureaus, Boards and Offices, Navy Department.
The Commandant, U. S. Marine Corps.
The Commandant, U. S. Coast Guard.
Subject: Amendments and Modifications of Contracts and Agreements pursuant to the First War Powers Act and Executive Order 9001.
Reference: (a) SecNav ltr dated Sept. 16, 1942 (PLD/RGMcC; mlp SO 9171022).

I. INTRODUCTORY AND DEFINITIONS

1. In the making of amendments and modifications of contracts and agreements under the First War Powers Act 1941 and Executive Order 9001, the general principles and procedure established by this directive shall be followed. Paragraphs 6, 8 and 9 of reference (a) are rescinded and superseded hereby.

2 (a). For the purpose of easy reference in this directive, the contracts and agreements to which the United States is a party are divided into (i) completed contracts and (ii) open contracts. A "completed contract" is a contract or agreement under which all work, which is required to be done to entitle the private contractor to final payment, has been done. All other contracts and agreements are termed "open contracts."

(b). Amendments and modifications may be divided into (i) those accompanied by substantial consideration to the United States (hereinafter referred to as "with consideration") and (ii) those not accompanied by such substantial consideration (hereinafter referred to as "without consideration").

(c). The term "consideration", as used herein, means performance by the contractor in excess of the performance required under the contract from the contractor or the giving up by the contractor of rights or benefits to which the contractor is entitled under the terms of the contract. The descriptive adjective "substantial" has been used in paragraph 2 (b) to exclude from the designation "with consideration" the cases in which the consideration is more formal than real. In other words, before an amendment or modification can be termed "with consideration", the consideration must have some substance and reality. It will be recalled that, prior to the First War Powers Act, 1941, and Executive Order 9001, contracting officers had no authority to amend contracts or agreements except in cases where tangible and actual benefits (*i. e.*, substantial consideration) would pass to the United States, *e. g.*, decreases in contract prices, longer guaranty periods, earlier deliveries, work in excess of that required under the contracts, etc. Such amendments and modifications, which could have been so made prior to the First War Powers Act, 1941, and Executive Order 9001, are the ones included within the designation "with consideration."

II. COMPLETED CONTRACTS

3. Except for change orders and other modifications made or to be made pursuant to the provisions of the contract, contracting officers shall not amend or modify completed contracts, unless authorized or directed so to do by the Office of Procurement and Material. If the proposed amendment or modification to a completed contract is supported by consideration and is not to be made pursuant to the provisions of the completed contract, a new contract should normally be made. If the making of a new contract is not practicable (whether for lack of consideration or otherwise), the application for an amendment or modification should be referred for action in accordance with the procedure set forth in paragraphs 6 and 7.

III. OPEN CONTRACTS

4. Amendments and modifications with consideration of open contracts may be made by contracting officers to the same extent and in the same manner as original contracts are made by such contracting officers.

5. Amendments and modifications without consideration in respect of open contracts may be made under the provisions of the First War Powers Act, 1941, and Executive Order 9001, only when such action will facilitate the prosecution of the war. The determination of what action will facilitate the prosecution of the war is a matter of judgment to be exercised in respect of the particular facts in each case. It is impossible to formulate general principles which may be applied in all cases and, therefore, a centralized control of amendments and modifications without consideration must be established.

6. Except with respect to field contracts, all applications for amendments or modifications without consideration (other than those described in paragraphs 9 and 10) of open contracts received by a contracting officer shall be referred to the Procurement Legal Division, attention of the Office of Counsel for the Bureau having technical cognizance of the subject matter of the contract sought to be amended or modified. If in any case such is not a practicable procedure, the application of the contractor shall be referred to such Division, attention of the Office of Counsel for the Bureau best able, in the opinion of the contracting officer, to furnish the necessary information. The Procurement Legal Division, through the Office of Counsel for the Bureau to which the application is referred, shall prepare a statement of the relevant facts with respect to such application and shall attach thereto an opinion of such Division as to the extent to which the contract may be amended or modified under the provisions of the First War Powers Act, 1941, and Executive Order 9001. Such statement of facts, together with the application of the contractor for an amendment or modification, the legal opinion of the Procurement Legal Division, any recommendation of the contracting officer or of the cognizant Bureau, and any other documents deemed to be relevant, shall be forwarded for action to the Office of Procurement and Material.

7. In the case of field contracts, all applications for amendments or modifications without consideration (other than those described in paragraphs 9 and 10) of open contracts received by a contracting officer shall be referred to the Procurement Legal Division, attention of the Office of Counsel for the Bureau of Supplies and Accounts, together with a statement of facts, relevant documentary material, and a recommendation of the contracting officer. Such Division shall then take action in accordance with the procedure set forth in paragraph 6.

8. The disposition of an application for an amendment or modification without consideration, which shall be directed by the Office of Procurement and Material, shall be final and shall constitute the action of the Secretary of the Navy in respect of such application.

9. Amendments or modifications without consideration of open contracts not involving adjustments upward of the price or prices to be paid by the United States or the equivalent thereof may be made by the contracting officer whenever, in the opinion of the contracting officer, such amendments or modifications will aid in the prosecution of the war. Such type of amendments or modifications includes extensions of time of performance where accrued liquidated damages are not involved, provisions for advance and progress payments, price adjustments downward, etc. In cases of doubt, the application for an amendment or modification may be referred to the Office of Procurement and Material.

10. Contracting officers should deny, without reference in accordance with the procedure set forth in paragraphs 6 and 7, all applications (with respect to both open and completed contracts) for amendments or modifications without

consideration involving an upward adjustment of the price or prices to be paid by the United States or the equivalent thereof (whether in the form of a remission of penalties or damages to be paid by the contractor or otherwise) if the upward adjustment in the price or its equivalent

(a) amounts to $100 or less, or

(b) is not, in the light of the aggregate amount of the contract or the total volume of war contracts being performed by the contractor, a substantial amount, or

(c) results from a mistake or error on the part of the contractor alone, which mistake or error is not apparent on the face of the contract or the schedule or the invitation to bid or other documents, unless failure to make such amendment or modification will, in the opinion of the contracting officer, impair the productive ability of the contractor.

11. Questions raised by contractors *prior* to the execution of contracts to the propriety, correctness, adequacy or clarity of contract provisions should be disposed of *prior* to such execution. In no instance should a contracting officer execute a contract in respect of which at the time of such execution such contracting officer intends to, or knows it is probable that he will, recommend an amendment or modification of such contract to increase upward the contract price without consideration to the United States.

12. In all cases in which contractors express dissatisfaction with open contract provisions and indicate beliefs that such provisions should be changed, contracting officers should direct such contractors *forthwith* to file application for amendment or modification of such provisions. In no case should a contracting officer suggest or acquiesce in a delay in the presentation of such application until completion of the contract.

IV. GENERAL SCOPE OF EXECUTIVE ORDER 9001

13. In making recommendations with respect to applications for amendments or modifications, contracting officers should be governed by the following general interpretation of the scope of Executive Order 9001 which will be applied by the Office of Procurement and Material:

First, Executive Order 9001 permits only such amendments and modifications which will facilitate the prosecution of the war.

Second, the continued productivity of essential producers of war materials is, as a general rule, necessary to facilitate the prosecution of the war, and amendments or modifications without consideration are clearly justifiable to the extent necessary to prevent impairment of such productive ability.

Third, fair and honest treatment of war contractors will assist in inducing wholehearted cooperation on the part of such contractors, and applications for amendments or modifications without consideration to relieve contractors from *loss* (not merely diminution of anticipated profit) due to obvious errors and mistakes or due to Government action may be regarded with liberality in respect of contractors essential to the war effort.

Fourth, carelessness and looseness on the part of contractors, however, cannot be encouraged and overwhelming generosity to careless contractors, no matter how great the risk of inducing some lack of cooperation, will not facilitate the prosecution of the war.

FORRESTAL, *Acting.*

Mr. NEALE. The Navy Department has acted under those policies laid down there. I think there were one or two very slight changes, but mostly as to procedure, since that time.

Following the issuance of that directive the Secretary wrote to the Comptroller General and asked him again [reading]:

In view of the fact we have issued this directive, do you want to go into every case individually and make the determination on your own account or not under the act?

And Mr. Warren replied by letter to the Secretary of the Navy, August 24, 1943, serial number B 35228, in which he reviewed the whole situation and this new directive and the procedure, and concluded by saying [reading]:

In view of the policy and procedures contemplated by the said directive for the amendment and modification, without consideration, of contracts by your

department under authority of Executive Order No. 9001, you are advised that, ordinarily, such amendments or modifications will not be questioned by this office when they are accompanied by a certificate of the contracting officer, or some other proper official of your department, to the effect that the amendment or modification was executed after an investigation and determination that, in the judgment of the Navy Department, such action would facilitate the prosecution of the war.

Even there they made the further statement they would reserve the right to make the decision in independent cases.

It has been our feeling, as several people testified here yesterday, that where the work was entirely finished and they were out of business or we no longer needed the material, or we could get it somewhere else, we are not justified under the authority given to us by Congress, to make payments. This was not a blank check to advance Government money. We still were trustees of public funds, and could only grant payments were we getting actual quid pro quo, value received, unless there was a finding that additional payment without quid pro quo would aid the prosecution of the war.

If there are any cases pending which on their merits would have been granted I am in hearty sympathy with those men and think they should be paid.

The difficulty would be, in such a broad statute, in the terms as broad as this S. 1477, that by passage of that in these terms it would open the door wide to a great number of contractors who would come back and try to recoup some of the moneys they lost.

The difficulties of administering this bill, or any variation of it, are just tremendous.

Take the case of the contractor, this Lake States company, who had been renegotiated but had been given a clearance. We do not know whether he would have given clearance, if he had been given additional money. We cannot go back and reopen the renegotiation proceeding and add this amount into it. Any payments could not be recovered. Excess profits taxes have expired.

Actually, the only case that could be simply applied would be the contractor who had one contract with the Government and lost money on that contract, or perhaps two contracts and lost money on both of them. Even then there is a question of whether you are relieving loss or giving fair and reasonable profit.

It seems to me that the way to handle the few cases which apparently exist of applications pending at the time of the Japanese surrender and to whom it is said, in terms, "We could have made the payment to you if the war was still going on, but the war is over and we cannot say that payment will now aid the prosecution of the war," would be by a private bill.

I think they could be handled in that way. Passage of this bill in these terms would make it tremendously difficult to administer and would open the Treasury door wide in giving a blank check. We do not want to be in a position to pass on those things.

We have had a number of contractors come back. They have been up on their cases half a dozen times on the merits. They keep coming back over and over again. They wait until they see the personnel who handled the case before leave, and then they come back in, thinking somebody new is there and will not know the facts. We have had cases submitted over and over again during the past years, and denied, and now they come back because they see new personnel.

The CHAIRMAN. You know, if you were looking into the face of bankruptcy you would come back several times.

Mr. NEALE. I sympathize with them, and if thereis a case where the Government was at fault, or a case where the Government led them on, or in a case where they made an honest mistake and performed valuable service to the war effort and lost some money on it, why, perhaps that should be taken care of, but I would hate to see the principle established that any Government contractor was entitled to make money on his contract no matter what happened.

The CHAIRMAN. I do not think that is the meaning.

Mr. NEALE. I do not, either, but I am afraid that is what we would be up against.

Mr. MCKEE. I can sympathize with the Navy, wishing to avoid additional work on this subject, but it seems to me that the people who actually did the work are entitled to consideration.

Mr. NEALE. We are afraid of paying out Government funds when there is no justification for the payment.

The CHAIRMAN. With the Army and the Navy and the General Accounting Office, we have a pretty good safeguard. It is a question of legislation to meet a condition that seems to have some merit to it, and this must be considered by the legislative body.

We are very grateful to you for your thought and your study and your expressions here. I think that about concludes our hearing for today.

Mr. Sullivan, do you want to speak here further?

Mr. SULLIVAN. May I be permitted to ask a question with respect to that Navy report before the witness leaves?

I do not believe that he has made it clear in his testimony, as is indicated in the report, and if he would be willing to I would like very much to know if it is his opinion that section 17a and b of the act of July 1944, the termination of war contracts, is to be applied to claims filed under the First War Powers Act?

Mr. NEALE. I would say that my interpretation of section 17 (a) and (b) is that that is intended for a situation of where there is existing no contract at all, where a contractor at the request of some Government official performs services and in advance of getting a contract, and for some reason no contract is signed, or where there is a contract but something defective in it, if it is not signed with the proper authorization or some other technical defect in the execution of the contract; that section 17 cannot be used to give relief to contractors under contracts with the Government where they are simply asking for additional money for services or supplies which were covered by the contract itself.

Section 17 could be used for extras ordered, for instance, by a man on the job, which were not reduced to writing and the contract was not amended to include the extras. Section 17 could be used in that case.

Mr. SULLIVAN. In other words, you think that 17 (a) and (b) refer to, we will say, a claim, rather than being tied in as all the other sections tie themselves in to a terminated war contract?

Mr. NEALE. It is our view that section 17 does not affect exclusively terminated war contracts. It follows the principles of the Dent Act of the last war, and it would cover a case of a contractor who at the

request of a Government official performed work and furnished supplies and did it completely and was all finished and never had a contract. That situation, by its terms, would not be a terminated war contract, but it would be a case where section 17 would give relief. That is our interpretation.

Mr. SULLIVAN. May I say, on what interpretation you apply it to the contracting agency as provided in the termination act?

Mr. NEALE. Regulation 12 of the Office of Contract Settlement covers claims under section 17.

Mr. SULLIVAN. The contracting agency, we will say, is the district office of the engineers, and various other offices within the Engineering Office, and they refuse to pay the claim. Then we go to exercise the right of an appeal. And section 113, preceding this 117 you refer to——

Mr. NEALE. Sections 13 and 17 of the act itself. It may be 117 in the code.

Mr. SULLIVAN. It starts off by saying [reading]:

> Whenever the contract agency responsible for settling any termination claim has not settled the claim then the war contractor is given the right to appeal said action to the Appeals Board.

Mr. NEALE. That is right.

Mr. SULLIVAN. If we are not the contractor whose contract has been canceled or terminated then do you think the act gives us any right of appeal? I think the act is limited absolutely in conferring a right to those contractors who have a termination claim.

Mr. NEALE. Section 17 has not been construed in that way by any of the departments, to my knowledge.

Colonel BRANNON. I might interpolate there that we have considered cases submitted under section 17 and have turned them down under the Contract Settlement Act, and appeal has been made to the Contract Settlement Board, who took cognizance of the case.

Mr. NEALE. I was going to add, regulation 12 provides for appeal to the Appeals Board of the Office of Contract Settlement.

Colonel BRANNON. I am talking about cases that were not terminated contracts.

Mr. SULLIVAN. Of course, the thought I have pursued, probably in an unskilled manner, is to get at the fact that in this hearing the Navy has said [reading]:

> We do not need relief by the Navy, because there are two section in the act of July 4, 1944, which give us all the relief we want.

I am disturbed that in that act which we are told by the Navy gives us the relief, the language of the act itself in section 113 specifically says "termination claim." Then we come to the provision of the act, which I do not have written down here, but I remember definitely of reading the section of the act that gives you a right to go to the Court of Claims also says "termination claims." And we all know that the jurisdiction that the Court of Claims has is only such jurisisdiction as is conferred by the act, and if they only have jurisdiction of termination claims we would got out on demurrer very fast.

Mr. NEALE. In view of the confusion which this letter of March 12 has caused, I would like to withdraw it. I tried to make clear it was written with misapprehension.

The CHAIRMAN. Maybe the Department would submit a new one, in view of all that has transpired.

Mr. NEALE. I would like to do that. The letter does not address itself to the main question.

The CHAIRMAN. We would be glad to have you do that. [Said new letter is at p. 3.]

Gentlemen, I think we can pause and let this matter close and try to let the Committee on the Judiciary wrestle with it. We are grateful to all of you who have come here and given us aid and assistance and advice. With our counsel, Mr. Sourwine, and together with some others who have assisted us, we hope to work out a bill in our report.

This statement by Senator Lucas will be inserted in the record. I asked Senator Lucas for that in the first day's hearing, and it should go in there.

(The statement referred to is inserted in body of Senator Lucas' testimony.)

The CHAIRMAN. Here is a wire received, and it will be inserted in the record, and permission was granted to file the statement mentioned.

(The wire is as follows:)

PHILADELPHIA, PA., *April 12, 1946.*

Senator PAT MCCARRAN,
Senate Judiciary Committee:

President of F. G. Vogt & Co. Inc., our client indisposed. Respectfully requests permission to file statement in support of Senate bill 1477.

FRANCIS H. BOHLEN, Jr.

(The statement, which was subsequently received, will be found in the appendix.)

The CHAIRMAN. The hearing will be adjourned.

(Whereupon, at 12:30 p. m., Saturday, April 13, 1946, the hearing adjourned.)

APPENDIX

UNITED STATES SENATE,
April 2, 1946.

Hon. SCOTT W. LUCAS,
United States Senate, Washington, D. C.

MY DEAR SENATOR: For some time I have been giving attention to your bill (S. 1477) to grant relief in certain cases where supplies and services have been furnished to the Government during the war. The purpose of your bill, as I understand it, is to restore some of the original objects of the First War Powers Act, which seem to have been diverted by interpretation of the Government departments.

Your bill is an important one, and, I believe, has much merit. The bill carries out the purpose of the First War Powers Act in permitting a contract to be amended or modified, when the head of a department determines that such action is necessary to prevent a manifest injustice.

Your bill is similar to the Dent Act (Public Law 322, 65th Cong.) entitled "An act to provide relief in cases of contracts connected with the prosecution of the war." This Dent Act gave authority to the Secretary of War to "adjust, pay and discharge any agreement, express or implied, upon a fair and equitable basis" for production of goods, materials, and supplies.

Your bill is also similar to the law passed after World War I which granted the same powers to the Secretary of the Navy. That was Public Law 611, Sixty-eighth Congress. That act gave authority to the Secretary of the Navy to "adjust, pay and discharge any agreement, express or implied, upon a fair and equitable basis" for the production of goods, materials, and supplies.

I am pleased to learn that your bill has been approved without change by the Department of Justice, Bureau of Budget, and Maritime Commission.

The Navy Department has approved the bill—with the exception that it suggests that the words "to prevent manifest injustice" in lines 3 and 4 of page two of the bill should be more definitely explained. Yet, these words in your bill are almost identical in their meaning with the words "upon a fair and equitable basis"—which are the words found in the Dent Act relating to the Navy Department in section 1 thereof.

The War Department has also approved the bill with minor changes similar to the recommendations of the Navy Department.

One of the main purposes of the First War Powers Act was to enable Government officials to amend and modify contracts for aiding in the war effort and to work manifest justice to suppliers and furnishers of services. Because of dire necessities due to the war, the Government itself has been compelled to do many things and perform acts—after a contract had been made—which resulted in gross injustice to suppliers. As the Departments of the Government have interpreted this law, practically all damages and losses thus incurred have been thrust upon contractors.

On many occasions one department of the Government has issued directives against the supplying of materials after a different department had made a contract for such materials. On many occasions one department has curtailed manpower and created conditions increasing labor costs or depriving a contractor from obtaining any labor—after a contract had been made by another department for that labor and manpower. In other cases a department of the Government has unreasonably delayed its own performance of its contracts because of war condition necessities—and yet such costs have in many cases been arbitrarily thrust upon contractors for supplies and services.

For the purpose of meeting the suggestions of the War and Navy Departments, I am enclosing a proposed amendment which I trust you may see fit to submit to the subcommittee of the Committee on Judiciary considering your bill.

It is my opinion that this amendment is in line with your original purposes in submitting his measure to Congress and meets the suggestions that come from the War and Navy Departments.

Very truly yours,

HOMER E. CAPEHART.

[Enclosure with foregoing letter]

PROPOSED AMENDMENT

A BILL (S. 1477) To authorize relief in certain cases where supplies or services have been furnished for the Government during the war

On page 2, line 5, after the colon, following the word "Government", insert the following: "*Provided*, That the authority herein directed to be exercised shall include, but not be confined to, power to consider, pass upon and allow any claim arising from (a) any loss caused by any act of the Government relating to restrictions on materials, restrictions on employment of or availability of labor, or the payment of wages related thereto; (b) any loss caused by any act of the Government in awarding any new contract or constracts in any location adjacent to the particular contract involved in the claim; (c) any loss based on unreasonable delay due to inability of any Government agency or department to meet its obligations, express or implied, on any contract, which unreasonable delay was in the nature of a breach of contract by the agency or department; *Provided further*, That any claim or claims thus considered, passed upon and allowed by the agency or department shall be considered to have been spent in the interest of the Government and for aid in the prosecution of the war effort and within the meaning, purport, and intent of the said First War Powers Act:".

STATEMENT OF F. G. VOGT & SONS, INC., IN SUPPORT OF SENATE BILL NO. 1477

F. G. Vogt & Sons, Inc., is a small, well-established packing company operating in the city of Philadelphia since the year 1891. It is engaged in the production of pork and pork products and operated at a profit in the years 1936-39, the years adopted by the Office of Price Administration for the purpose of determining what constitutes normal profits for the meat-packing industry.

For two principal reasons the Vogt Co., after having operated profitably to June 1944, suffered heavy losses to the end of its fiscal year ending October 1944 and during its entire fiscal year ending October 1945. First there was the very serious scarcity of hogs and high prices of live hogs commencing in the summer of 1944 and continuing thereafter. Secondly, the Government requisitioned approximately 50 percent of its products for the armed services under set-aside orders and forced it to sell at specially fixed OPA prices.

The set-aside orders became effective late in August 1944. In September and October 1944 it is estimated that the Vogt Co. lost $132,255.66 and $92,563.06, respectively, on its products sold to the Government under set-aside orders. In its first quarter of its fiscal year 1945, it lost $82,419.17 on its Government sales. In its second quarter which brought it up to May 1, 1945, it lost $45,700.19 on its Government sales.

These losses from September 1944 to April 1945 on Government sales can be ascribed to the following factors: The Vogt Co. is a small company with specialized products sold in a specialized manner. The Government requisitioning of large percentages of its products disrupted its business. Among other things, the OPA price regulation for pork required a discount of $1 per hundredweight on carload lots. The Vogt Co. theretofore had sold practically no carload lots. Government orders for the armed services were required to be packed in special containers for which the OPA allowed insufficient charges. Overseas hams and other pork products were required to be smoked 24, 36, and 48 hours as against the usual 12 hours for domestic products. The Army inspectors chose the most salable cuts of pork and left the company with the least desirable cuts for sale to the general public. Also during most of this period the price of live hogs was abnormally high and the OPA prices fixed for Government purchases were too low.

The Vogt Co. was very glad to do its part in the war effort and received a highly commendatory letter from the Quartermaster's Department of the United States Army. The effect, however, of the combination of set-aside orders and the

OPA pricing has been to take the products of the company at prices which did not represent "just compensation," contrary to the fifth amendment of the Constitution which provides that private property cannot be taken by the Government except upon the payment of "just compensation."

There had been an OPA order known as Supplementary Order No. 9 which permitted sellers having Government contracts, who could establish that maximum prices were unreasonably low, to apply for adjustments upwards. This remedy was denied to meat packers from and after May 1943 when it was made inapplicable to the maximum price regulations covering pork, beef and other meat products, and it was not available to the Vogt Co. during the period of its very serious losses on products sold to the Government for the armed services.

The OPA recognized deficiencies in its pricing and in its subsidies by revising its pork price regulation and granting additional subsidies. In April and May of 1945, while the controversy was pending in Congress which resulted in the passage of the Barkley-Bates amendment to the Price Control Act, it raised the prices of overseas hams and other pork cuts destined for the armed services, increased the allowance for packing, and largely did away with the discount on carload lots. This action however had no retroactive effect. On April 24, 1945, the Office of Economic Stabilization at the instance of OPA, issued Directive 41 which, among other things, provided for what has become known as the bail-out subsidy, granting to packers whose operations were profitable in the basic years 1936 to 1939, a subsidy equal to the amount necessary to reimburse them for losses from May 1, 1945, to the end of their fiscal year. This subsidy was put into effect by Procedural Regulation 16 issued by Administrator Bowles on August 20, 1945. When a further controversy arose as to whether the Barkley-Bates amendment was being complied with Directive 90 was issued on December 4, 1945. This directive granted further subsidies, but in the case of companies in a loss position, these subsidies are credited against the bail-out subsidy.

The Vogt Co. has filed a claim for bail-out subsidy of $78,500 for its semiannual period from May 1, 1945, but there is no bail-out subsidy or similar provision covering its much heavier losses during the 8 months prior to that date, totaling an estimated $352,938.08.

When one department of the Government takes property for the armed services and another department fixes the prices which the Government must pay, there is no reason why the Government should not recognize its responsibility to make good losses during the entire period of the taking. In such a case there is no just reason for the May 1, 1945, dead line, especially where the losses suffered prior to the dead line were much larger.

It was manifestly unjust to require the Vogt Co. to supply its products to the Government under special specifications which disrupted its business and at prices so fixed as to result in serious losses. The company believes such action took its property without the just compensation it was entitled to under the Constitution. It takes the position that there is no reason why its claims for losses should not be recognized as far back as September 1944 when the set-aside orders were put into effect and believes that its claims could properly be considered under proposed Senate Act No. 1477. It therefore respectfully urges that this act be made law.

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July 9

United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 79th CONGRESS, SECOND SESSION

Vol. 92 WASHINGTON, TUESDAY, JULY 9, 1946 No. 133

Senate

(Legislative day of Friday, July 5, 1946)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

Dr. L. Ralph Tabor, pastor, Luther Place Memorial Church, Washington, D. C., offered the following prayer:

Father in Heaven, we thank Thee that Thou hast brought us to this day. We praise Thee that Thou hast been our help in ages past, that Thou art our hope for years to come. We bow in gratitude to Thee, the source of whatever talents and abilities are possessed by men. Use the abilities of Thy servants in this place that Thine own will may be done and Thine own purposes may be served.

Let Thine own light give clarity of vision for the honest performance of daily labors here; let Thy purposes be served by a common will toward what is right and best for the people of this Nation and of the world. Let understanding and sincerity mark the deeds of these hours. Give to Thy servants the desire to accept the guidance of Thy spirit that Thy greater glory may be known through this Nation under Thee.

Let the words which are spoken here this day and the thoughts which are in the hearts of those in places of high responsibility be acceptable in Thy sight. Through Jesus Christ our Lord. Amen.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Monday, July 8, 1946, was dispensed with, and the Journal was approved.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Miller, one of his secretaries.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had agreed to the amendment of the Senate to the bill (H. R. 3424) to permit renewal of certain trade-mark registrations after expiry thereof, and for other purposes.

The message also announced that the House further insisted upon its disagreement to the amendments of the Senate numbered 27 and 28 to the bill (H. R. 6837) making appropriations for the Military Establishment for the fiscal year ending June 30, 1947, and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 752) to amend the act of June 7, 1939 (53 Stat. 811), as amended, relating to the acquisition of stocks of strategic and critical materials for national defense purposes.

The message also announced that the House had agreed to the following concurrent resolutions of the Senate:

S. Con. Res. 69. Concurrent resolution further increasing the limit of expenditures for the investigation of the Pearl Harbor attack; and

S. Con. Res. 70. Concurrent resolution to further extend the time for filing the report, together with the powers and functions, of the Joint Committee To Investigate the Pearl Harbor Attack.

CORRECTION OF THE RECORD

Mr. MURDOCK. Mr. President, I find that in the colloquy which took place yesterday between myself and the distinguished Senator from Nebraska [Mr. WHERRY], as set forth in the third column on page 8490 of the CONGRESSIONAL RECORD, some incomplete statements were made by me. At least, they appear to be incomplete in the RECORD. There are also one or two minor corrections which should be made. I ask unanimous consent that the permanent RECORD may be corrected accordingly.

The PRESIDING OFFICER. Without objection, the corrections will be made for the permanent RECORD.

EXECUTIVE COMMUNICATIONS, ETC.

The PRESIDENT pro tempore laid before the Senate the following communication and letters, which were referred as indicated:

SUPPLEMENTAL ESTIMATE, DEPARTMENT OF AGRICULTURE (S. DOC. NO. 236)

A communication from the President of the United States, transmitting a supplemental estimate of appropriation for the Department of Agriculture, amounting to $85,000, fiscal year 1947 (with an accompanying paper); to the Committee on Appropriations and ordered to be printed.

RELIEF FOR CERTAIN DISBURSING OFFICERS OF THE NAVY

A letter from the Acting Secretary of the Navy, reporting, pursuant to law, on the cases of relief granted to disbursing officers of the Navy on account of loss or deficiency while in line of duty; to the Committee on Naval Affairs.

MRS. MARTHA P. MATTHEWS

A letter from the Acting Secretary of Agriculture, transmitting a draft of proposed legislation for the relief of Mrs. Martha P. Matthews, clerk-typist, Jackson, Tenn., Farm Security Administration, United States Department of Agriculture (with an accompanying paper); to the Committee on Claims.

LIMITATIONS OF EXPENDITURES FOR SPECIAL PROJECTS

A letter from the Acting Director of the Bureau of the Budget, transmitting, pursuant to law, copies of letters addressed to the heads of the State Department and Office of War Mobilization and Reconversion, which establish limitations on the amounts that may be expended for travel from sums set apart in appropriations for special projects (with accompanying papers); to the Committee on Appropriations.

INTEGRATION OF SURPLUS DISPOSAL—REPORT OF WAR ASSETS ADMINISTRATION

A letter from the Administrator of the War Assets Administration, transmitting, pursuant to law, the first quarterly report of that Administration, 1946, relating to the integration of surplus disposal (with an accompanying report); to the Committee on Military Affairs.

DISPOSITION OF EXECUTIVE PAPERS

A letter from the Archivist of the United States, transmitting, pursuant to law, a list of papers and documents on the files of several departments and agencies of the Government which are not needed in the conduct of business and have no permanent value or historical interest, and requesting action looking to their disposition (with accompanying papers); to a Joint Select Committee on the Disposition of Papers in the Executive Departments.

The PRESIDENT pro tempore appointed Mr. BARKLEY and Mr. BREWSTER members of the committee on the part of the Senate.

PETITION

The PRESIDENT pro tempore laid before the Senate a resolution adopted by Cathay Post, No. 185, American Legion, Denver, Colo., favoring statehood for the

Territory of Hawaii; to the Committee on Territories and Insular Affairs.

TRANSFER OF JEWS TO PALESTINE

Mr. WILSON. Mr. President, I ask unanimous consent to present for appropriate reference and to have printed in the Appendix of the RECORD, without the signatures attached, a resolution adopted by the citizens of Council Bluffs, Iowa, with reference to the prompt transference of 100,000 Jews to Palestine.

There being no objection, the resolution was received, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, without the signatures attached, as follows:

Whereas the Anglo-American committee of inquiry on Palestine has submitted to both of the governments concerned the urgent recommendation that 100,000 displaced European Jews be allowed to enter Palestine during 1946; and

Whereas recent statements by members of the British Labor Government indicate an intention not to accept such recommendation, and recent acts by this Government will lead only to further consultation and unnecessary delay in the achievement of this objective; and

Whereas further procrastination in the fulfillment of this humanitarian obligation can serve no purpose but to increase the agonies and sufferings of these unfortunate people, for whom no home exists in Europe and who can be rehabilitated in Palestine: Now, therefore, be it

Resolved, That it is the sense of this assembly of citizens of Council Bluffs and the State of Iowa that the President of the United States, the Secretary of State, and the United States Senate and House of Representatives take action to effectuate immediately the unanimous recommendation of the joint committee with respect to the prompt transference of 100,000 Jews to Palestine; be it further

Resolved, That it is the desire and will of the American people that this solemn obligation, to which this Government is a party, be fulfilled, and that these homeless people be given the opportunity to live as free men in this land of their choice; be it further

Resolved, That this resolution and appropriate copies be sent respectively to the President of the United States, the Secretary of State, the President pro tempore of the United States Senate, the Speaker of the House of Representatives of the United States and the Senators and Representatives from the State of Iowa.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCARRAN, from the Committee on the Judiciary:

S. 1477. A bill to authorize relief in certain cases where supplies or services have been furnished for the Government during the war; with amendments (Rept. No. 1669);

S. Con. Res. 64. Concurrent resolution disapproving Reorganization Plan No. 1; adversely (Rept. No. 1670);

S. Con. Res. 65. Concurrent resolution disapproving Reorganization Plan No. 2; adversely (Rept. No. 1671); and

S. Con. Res. 66. Concurrent resolution disapproving Reorganization Plan No. 3; adversely (Rept. No. 1672).

By Mr. MURRAY, from the Committee on Education and Labor:

H. Con. Res. 148. Concurrent resolution creating a joint select committee to study and recommend legislation concerning labor relations; with amendments (Rept. No. 1673), and, under the rule, the concurrent resolution was referred to the Committee To Audit and Control the Contingent Expenses of the Senate.

By Mr. DOWNEY, from the Committee on Irrigation and Reclamation:

S. Res. 296. Resolution relating to the utilization and disposition of the water resources of the Central Valley project in California; with an amendment.

BILL INTRODUCED

Mr. O'MAHONEY (for Mr. WHEELER), by unanimous consent, introduced a bill (S. 2420) authorizing the issuance of a patent in fee to Bert Miles, which was read twice by its title and referred to the Committee on Indian Affairs.

INVESTIGATION OF CENTRALIZATION OF HEAVY INDUSTRY

Mr. McCARRAN submitted the following resolution (S. Res. 301), which was referred to the Committee To Audit and Control the Contingent Expenses of the Senate:

Resolved, That the limit of expenditures of the special committee appointed pursuant to Senate Resolution 190, Seventy-eighth Congress, agreed to December 21, 1943, to investigate the effect upon interstate commerce of the centralization of heavy industry in the United States, hereby is increased by $2,352.70 in addition to the amount of $5,000 originally authorized.

RESTRICTIVE LABOR LEGISLATION: AN ATTACK ON CIVIL LIBERTIES—ADDRESS BY SENATOR MURRAY

[Mr. MURRAY asked and obtained leave to have printed in the RECORD an address on the subject Restrictive Labor Legislation: An Attack on Civil Liberties, delivered by him at the National Lawyers Guild Convention at the Hotel Hollenden, Cleveland, Ohio, July 5, 1946, which will appear hereafter in the Appendix.]

ROOSEVELT AND THE FUTURE OF LIBERALISM—ADDRESS BY SENATOR PEPPER

[Mr. TUNNELL asked and obtained leave to have printed in the RECORD an address on the subject Roosevelt and the Future of Liberalism, delivered by Senator PEPPER at the National Lawyers Guild banquet in Cleveland, Ohio, July 6, 1946, which appears in the Appendix.]

LAND O' LAKES CREAMERIES—ARTICLE BY ARNOLD NICHOLSON

[Mr. WILEY asked and obtained leave to have printed in the RECORD an article entitled "They Sell a Billion Pounds of Milk a Year," by Arnold Nicholson, describing the operation of Land O' Lakes Creameries, published in the magazine Country Gentleman, of June 1946, which appears in the Appendix.]

EXTENSION OF PRICE CONTROL

The Senate resumed consideration of the joint resolution (H. J. Res. 371) extending the effective period of the emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended.

The PRESIDENT pro tempore. The question is on the amendment offered by the Senator from Oklahoma [Mr. THOMAS] in the nature of a substitute for the amendment proposed by the Senator from Nebraska [Mr. WHERRY] on behalf of himself and other Seantors.

Mr. REED. Mr. President, I send to the desk and ask to have printed and lie upon the table two amendments which I intend to propose to House Joint Resolution 371 which is now before the Senate.

The PRESIDENT pro tempore. The amendments will be received and lie on the table.

Mr. WILEY. Mr. President, I am not a member of the Banking and Currency Committee of this great body which has been considering this new measure affecting OPA. Neither have I had the opportunity to read the testimony which may have been taken before the committee. However, I have given considerable thought to this whole subject for a long time, and like all my brethren of the Senate, I have received a number of letters and telegrams from men and women in every walk of life, from those living in my own community and State and from those living outside the State. I am not talking about the countless telegrams which have been the result of siphoned thinking; I am talking about the telegrams which have come from men and women who have attempted to think this problem through.

Mr. President, I should like to submit a few points regarding the matter of price control now under consideration, and my position on it.

The situation has been so confused in recent days as a result of the President's actions and as a result of the propagandizing of OPA bureaucrats that it seems to me some straightening out is in order.

THE PREVIOUS OPA EXTENSION BILL

First. Mr. President, I voted against the previous version of the OPA extension bill, which was later vetoed by the President. I know, of course, how long and how hard and continuously the Members of the Senate and the House had worked on that measure.

One of its principal defects, I felt, was its failure to decontrol dairy and livestock products. I had many times pointed out on the floor of the Senate the terrible and ruinous effects of OPA on the dairy industry, in particular on the production of butter, cheese, evaporated milk, and other necessary dairy items, which are vitally needed in this famine-stricken world of today, but which, thanks to OPA blundering and ineptitude, have not been produced at anywhere near the quantities that they might have been under a free economy.

I stress the words "free economy" because America through the decades of her existence knew nothing else, until the war came upon us, when, with a great emergency facing us and an extraordinary situation developing, our economy became subject to the control of OPA. To all intents and purposes, however, the war is over and yet production, which is so vital in the postwar situation, has not been brought about. I have spoken time and time again of the dairy industry in relation to the angle of production.

In spite of this major draw-back, I believed that the OPA extension bill, as it was sent to the President, represented many valuable improvements over the previous price situation.

THE PRESIDENT'S VETO

Second. I believe that the President's veto of the OPA extension bill was a

Calendar No. 1703

79TH CONGRESS, 2d Session } SENATE { REPORT No. 1669

WAR CONTRACT HARDSHIP CLAIMS

JULY 9 (legislative day, JULY 5), 1946.—Ordered to be printed

Mr. MCCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1477]

The Committee on the Judiciary, to whom was referred the bill (S. 1477) to authorize relief in certain cases where supplies or services have been furnished for the Government during the war, having considered the same, report the bill to the Senate favorably with amendments, and recommend that the bill as amended do pass.

Public hearings on this bill were held on April 12 and 13, 1946, by a subcommittee of the Senate Committee on the Judiciary.

AMENDMENTS

Committee amendment No. 1: Strike out all after the enacting clause and insert the following:

That where work, supplies, or services have been furnished between December 7, 1941, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, App. sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within 60 days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between December 7, 1941, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, App., sec. 1191), the Contract Settlement

Act of 1944 (41 U. S. C., Supp. IV,, secs. 101–125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this Act. Wherever a department or agency considering a claim under this Act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced, claims for such losses shall not be allowed under this Act.

(b) Every claimant under this Act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

SEC. 4. Appropriations or funds available for work, supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided,* That where no such appropriations are available, appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this Act, together with the amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within 6 months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act), and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

Committee amendment No. 2: Amend the title of the bill to read as follows:

A bill to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

STATEMENT

The purpose of this bill is to authorize departments and agencies of the Government, in accordance with regulations to be prescribed by the President within 60 days after the date of approval of this act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts.

During the course of the hearings, representatives of the War Department, Navy Department, General Accounting Office, and a number of private contracting firms, appeared and testified. Certain objections to the bill, as introduced, were raised by those who testified and the bill was amended in committee and was ordered reported out favorably, as amended, with a view to meeting the objections which were made.

This bill, as amended, would afford financial relief to those contractors who suffered losses in the performance of war contracts in those cases where the claim would have received favorable consideration under the First War Powers Act and Executive Order No. 9001 if action had been taken by the Government prior to the capitulation of the Japanese Government. However, upon the capitulation, the position was taken by certain departments and agencies of the Government involved, that no relief should be granted under the authority which then existed, unless the action was required in order to insure continued production necessary to meet post VJ-day requirements. This was on the basis that the First War Powers Act was enacted to aid in the successful prosecution of the war and not as an aid to the contractors. As a result, a number of claims which were in process at the time of the surrender of the Japanese Government, or which had not been presented prior to such time, were denied even though the facts in a particular case would have justified favorable action if such action had been taken prior to surrender.

The committee has concluded that as a matter of sound legislative policy this bill, as amended, should pass, as its adoption is the only way to afford a means of considering, adjusting and settling equitable claims of the contractors affected.

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committee I received a number of letters from constituents suggesting that the program should be renewed for 1 year and not for 3. I am delighted that the change has been made.

Mr. OVERTON. Mr. President, I have been absent from the Chamber for a moment. Has a change been made in the time for extension of the Sugar Act?

Mr. GEORGE. I have moved the consideration of the Sugar Act extension bill, and propose to ask the Senate to disagree to the Senate committee amendment extending it for 3 years, so that it will be extended for only 1 year.

Mr. OVERTON. I am very happy to know that.

Mr. PEPPER. Mr. President, I am very much pleased that the able Senator from Georgia contemplates a modification of the bill so that the act will be extended for 1 year only.

I also have been discussing this matter with the able chairman of the Finance Committee, and he has said that he will take up the new sugar bill in January of the coming year. I mention that because the people in my State, have during the war, while the sugar quotas have been in suspense, added some new facilities, and they are desirous of adding a few other facilities, which are generally small in character. They were being installed, and others will be installed when it becomes possible to put them in, in order more adequately to meet the demand for sugar in the United States.

The Everglades of Florida comprise an immense territory ideally adapted to the production of sugar from sugarcane. Because of the peculiar historical reason for the regulation of sugar quotas, Florida is one of the areas which has never been able to approach anything like its capacity in sugar production. So when the bill comes up in January I am sure I shall be joined by my colleague from Florida in making an effort to provide that the facilities which are installed during the time sugar quotas are in suspense shall be recognized, and shall not be squeezed out should the quota system go into effect again under the law.

I desire to say for the RECORD, and also as notice to those who are interested in the subject of sugar quotas in the Nation at large, that if areas such as ours in Florida, ideally adapted to the production of sugar cane, are not protected in the installation of facilities while the quotas are in suspense, we shall have no other recourse except to support any effort to reconsider the whole base for the quota system in sugar. But with the assurance I have received from the able Senator from Georgia, and with this limitation to a year, I am quite pleased to let the matter go along until January.

Mr. GEORGE. I am pleased to say to the Senator from Florida that we will undertake a revision of the Sugar Act early in January, after the beginning of the next session.

Mr. President, I now ask unanimous consent for the present consideration of House bill 6689.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the bill (H. R. 6689) to extend, for an additional year, the provisions of the Sugar Act of 1937, as amended, and the taxes with respect to sugar, which had been reported from the Committee on Finance with amendments.

Mr. GEORGE. Mr. President, I ask that the committee amendment on page 1, line 7, after "December 31," to strike out "1947" and insert "1949" be rejected.

The PRESIDING OFFICER. Without objection, the amendment is rejected.

Mr. GEORGE. I also ask that the committee amendment in line 9, after the word "year", to strike out "1947" and insert "1949" be rejected.

The PRESIDING OFFICER. Without objection, the amendment is rejected.

Mr. GEORGE. I ask that the committee amendment on page 2, in line 7, after "June 30", to strike out "1948" and insert "1950" be rejected.

The PRESIDING OFFICER. Without objection, the amendment is rejected.

Mr. GEORGE. I ask the Senate to agree to the remaining committee amendment, on page 2, beginning in line 8, to strike out all of section 3 because when the House passed this particular bill, the Philippine independence bill had not been passed, and therefore it is necessary to strike section 3 out of the bill, in order to prevent confusion between the Philippine independence bill and this particular bill.

The PRESIDING OFFICER. Without objection, the committee amendment is agreed to.

The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read the third time.

The bill (H. R. 6689) was read the third time and passed.

The title was amended so as to read: "An act to extend, for three additional years, the provisions of the Sugar Act of 1937, as amended, and the taxes with respect to sugar."

PERSONAL STATEMENT

Mr. McKELLAR. Mr. President, what I am going to say is in self-defense. I read from last Sunday's Washington Post an article under the heading "The Washington Merry-Go-Round," as follows:

M'KELLAR TURNS TVA SUGAR-DAD

(By Drew Pearson)

Politics makes queer bedfellows and election time brings queer changes in politicians. Witness today the sudden fierce championship of TVA by its old foe, Senator KENNETH MCKELLAR.

MCKELLAR is fighting a desperate battle for reelection and is conducting his campaign from Washington. His advisers don't want him to appear in person.

Last month MCKELLAR added to the Government corporations appropriation bill funds to complete two TVA dams in east Tennessee. The House had voted down the TVA request for funds to complete the Watauga Dam, but MCKELLAR not only got the Senate to vote funds for Watauga but also for the South Holston Dam.

However, because of the shortage of materials and manpower, TVA had proposed finishing the Watauga Dam before resuming work on South Holston. It planned to move machinery and temporary housing from the first site to the second—at a saving of around $2,000,000.

So, when the bill went into joint conference last week MCKELLAR got the shock of his life. Able young Representative ALBERT GORE, of Tennessee, had the nerve to amend MCKELLAR'S language. GORE simply proposed that the dam construction be accomplished "consistent with economy and construction efficiency."

MCKELLAR was furious. The GORE amendment meant that he could boast of putting only half as many people to work and of having started only one dam by the time of the primary next month.

MCKELLAR flatly declared the Senate could not accept the Gore amendment. Representative JAMIE WHITTEN, of Mississippi, told him the House would stand by GORE, however, and reluctantly MCKELLAR yielded.

Two days later, however, MCKELLAR proposed that the will of Congress be ignored. He actually wired TVA proposing that it go ahead and build the two dams simultaneously, despite the Gore amendment.

Mr. President, as I said a while ago, what I now have to say is in self-defense.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. McKELLAR. I decline to yield.

Mr. LUCAS. I was only going to say to the Senator that if he would address his remarks occasionally to the Democrats on this side as well as to the Republicans, we also would enjoy them.

Mr. McKELLAR. I hope so. I hope all can hear my statement. I am going to talk loud enough so all may hear. I am obliged to defend my own character. I am speaking of Drew Pearson.

On Sunday this miserable, lying, corrupt, dishonest scoundrel, Drew Pearson, claiming to be a newspaperman but with a dishonest and disordered mentality and a putrid and corrupt morality, wrote and published another lying article about me. Silliman Evans, of the Nashville Tennessean, another lying scoundrel, was in Washington last week. The two liars evidently got together.

Pearson states in this article:

MCKELLAR is fighting a desperate battle for reelection and is conducting his campaign from Washington. His advisers don't want him to appear in person.

This is a lie out of the whole cloth, known to be a lie when Pearson wrote it, known to be a lie when Silliman Evans bought and paid for it, and no person with the character sufficient to sleep with a hog or to associate with dogs or polecats would write such an article or would print such an article. Indeed, Pearson in his mental make-up is a cross between a ranting maniac and a drunken Silliman Evans.

Again Pearson says:

Witness today the sudden fierce championship of TVA by its old foe, Senator KENNETH MCKELLAR.

In writing this falsehood he is attempting to deny the statements of some of the leading men of the United States and of the world. He is attempting to deny the CONGRESSIONAL RECORDS

all of which show that his whole article is an asinine perversion of the truth.

Pearson's next statement is equally false, with one exception, and that was that the House turned Lilienthal down when he asked the House for an appropriation for the Watauga Dam. Incidentally, that is merely what has happened every time. Of the 15 or 20 or more dams which have been built in Tennessee, the House first turned them all down, and they were added by virtually a 13 to 12 vote in the Senate Committee on Appropriations. That is the way the dams were built.

When the bill came to the Senate I had placed in it an amendment providing for the completion of both the Watauga and Holston Dams, which dams had been partially built and were stopped by the war. My amendment for both dams was put into the bill. The Gore amendment, about which Pearson has so much to say and which was added in the House to my amendment providing for both dams, is as follows—these words seemed to me meaningless until I found out that they were part of the scheme not to build the dam—"consistent with economy and construction efficiency." Those words do not appear in the conference report and are not a part of the bill as passed by both the Senate and the House. Every word of the amendment agreed upon was prepared by me. The Gore amendment, or any part of it, is not in the bill and will not be in the bill, and yet this liar, Pearson, for money has half a column about GORE'S amendment being a part of the bill.

The article has no resemblance to truth, but is simply the result of a disordered and corrupt mind working only for money paid for it by Silliman Evans.

I am informed that Sunday night this same paid, low-lived skunk, Pearson, gave out a statement over the radio that I had tried my best to get President Truman to write a letter endorsing my candidacy for the Senate and that Mr. E. H. Crump, one of the most honorable of men and a former Member of the House of Representatives and a leading citizen of Memphis, had told me that if I did not get a letter from President Truman my election was lost.

It is needless for me to tell the Members of this body—and I do so only to keep the record straight—that this unmitigated liar and mercenary money-making crook Pearson was making a lie out of the whole cloth in uttering this statement. President Truman and Mr. Justice Burton, of the Supreme Court of the United States, were both members of the Appropriations Committee when I had so many of my fights to have the East Tennessee dams built over the "yardstick" opposition of Lilienthal and A. E. Morgan. Both President Truman, then a Senator, and Justice Burton, then a Senator, were on my side in building the dams. And, while I asked other members of the committee to tell the facts, I purposely never mentioned the matter to either of these former members of the committee because of their present positions in the Government. I did not want to embarrass either one in the performance of his high duties by asking for a statement about a former committee action.

The statement that I have directly or indirectly, openly or covertly, or in any other way, asked President Truman for a statement of any kind about my candidacy is damnably false. I am just as sure that Mr. Crump has never made such a statement as Pearson has attributed to him. He has never made it to me or to anyone else, so far as I know. Pearson has been such a gorgeous liar in Washington that many people have denounced him as a liar and a debased creature seeking to make money out of his lies. But when these two mammoth liars, Pearson and Silliman Evans, got together last week it is easy to see how they could write and publish lies about me. They are both despicable money-grabbing liars.

Drew Pearson, the biggest liar in Washington, and Silliman Evans, the biggest liar in Tennessee! What a conference that must have been last week. Silliman being utterly discredited in Tennessee, and Pearson knowing it, how Pearson's hands must have itched and his mouth watered for Silliman's money in that unhappy situation.

Silliman had Colonel Browning, now in the Army in Germany, nominated for governor, but Browning would not come back and run. It was published that Silliman, finding that Browning was going to be overwhelmingly beaten by Governor McCord, sent a confidential agent over to Germany to get Colonel Browning to secure a leave of absence and come back and run against Governor McCord. I believe the name of the agent was Joe Hatcher. He sent his confidential agent, Joe Hatcher, to Germany to get Colonel Browning to secure leave of absence and come back and run against Governor McCord.

Governor McCord and I are running on the same ticket. Mr. Taylor is running for office on the same ticket. The three of us are together on the ticket. Mr. Evans, not being satisfied with his own ticket, sent this agent to Germany to get Colonel Browning to come back and run against Governor McCord. But the agent came back empty-handed. Browning did not succumb to Silliman's blandishment. He knew that he would be beaten whether he came or not.

As to the senatorial race, I have had practically nothing to say about it up to date. However, there is no question about my overwhelming nomination. It is not a question of how many counties I will carry but only a question of what county, if any, I may lose. Many write me and say that I will not lose a county. It was this situation that caused the biggest liar in Tennessee to turn for help to the biggest liar in Washington—conceded to be the biggest liar not only in Washington, but in the entire country. Indeed, I doubt if there is such a huge liar in all the world as this man Pearson. He has been called a liar by Senators. I am not the only one who has called him a liar. He has been called a liar by two Presidents, if I remember correctly. He has been called a liar by everyone he ever wrote about, unless some consideration passed. But fortunately the good people of Tennessee will not be misled by Silliman's lies or by Pearson's lies. I believe that I will be overwhelmingly nominated on August 1, the lying writer, Pearson, and the lying publisher, Silliman, to the contrary notwithstanding.

Mr. President, I am sorry to have had to bring my political affairs before the Senate; but with such a publication as Pearson made on Sunday, and with such a statement as he made on the radio Sunday night, which was even worse than that which was published, there was nothing for me to do but to take the course I have followed in self-defense. I thank Senators for listening to what I have had to say.

Mr. STEWART. Mr. President, I am moved by the remarks made by my colleague to make a very brief statement of my own accord in connection with what he has had to say regarding the unwarranted and utterly unfair attack which has been made upon him, and which has been described by him in such eloquently descriptive terms that I would not undertake to improve upon his description. I could not do it.

I am sure that the statements which have been made concerning the senior Senator from Tennessee have not hurt his reputation in the Senate or in Tennessee. I simply wish to add to what he has had to say that the information given to Mr. Pearson about the political situation in Tennessee as respects the senior Senator from Tennessee is just about the worst information he has ever had. There is no question about my colleague's election. There is no need for him to go to Tennessee. That is the reason why he has not gone. His friends know it, and they have advised him to that effect. I have been keeping in touch with the situation as well as anybody could. His position here is not even seriously threatened, because there is practically no one running against him. He has practically no opposition.

Today his reputation stands as firm in Tennessee as it has ever stood. He has been elected in every campaign in which he has ever participated. This time he will be renominated and reelected to the Senate by just as great a majority as he has ever received, if not by a larger majority. There seem to be influences at work which have for their purpose an effort to hurt him politically.

I remember when the same prognosticator, Drew Pearson, stated that the Senator from Louisiana [Mr. OVERTON], was making the race of his life. He beat the daylights out of everything in sight, without even stumping the State.

The duties of my colleague are here. He is staying here and attending to them. He does not need to go to Tennessee. I ask the people of the country to watch the returns when they come in. The people of the State of Tennessee will elect the senior Senator from Tennessee by a greater majority than any by which he has ever won—and that will be a considerable majority.

Mr. McKELLAR. Mr. President, I thank my colleague. I did not know that he had intended to say anything. I thank him with all my heart.

WAR CONTRACT HARDSHIP CLAIMS

Mr. LUCAS. Mr. President, I ask unanimous consent for the present consideration of Senate bill 1477, Calendar No. 1703.

Mr. AIKEN. Mr. President, may I ask what the bill is?

Mr. LUCAS. It is Senate bill 1477. It was reported from the Committee on the Judiciary.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The CHIEF CLERK. A bill (S. 1477) to authorize relief in certain cases where supplies or services have been furnished for the Government during the war.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. WHERRY. Mr. President, reserving the right to object, I should like to have the Senator explain to the Senate what the bill is.

Mr. LUCAS. I shall be glad to do so.

Mr. President, this is a bill which seeks to amend section 201 of the original War Powers Act. Without going into the language of that act, I may say to the Senate that when VJ-day came a great number of contracts were in the process of being negotiated between the War and Navy Departments and contractors. When VJ-day arrived the War Department took the position that under a strict interpretation of the language of the War Powers Act it was impossible for the War Department to continue toward an equitable arrangement or negotiation with the contractors with respect to contracts which were then in process of being negotiated. At that time the Navy Department believed the law to be sufficient, and continued to make equitable arrangements with contractors.

As I understand the matter, the Maritime Commission took practically the same position as that taken by the Navy Department. In order to meet the objections of the War Department, the Senator from Illinois submitted the amendment which was immediately referred to the Judiciary Committee, and the Judiciary Committee held hearings upon the amendment. The committee had before it the contractors and representatives of the War Department and the Navy Department and other officials of Government, who testified regarding the matter.

I merely give the Senate one example of how important this matter is to the small contractors who were caught in between when VJ-day came. For instance, I cite the one case of the Lake States Engineering Co., of Chicago, which has a claim on account of the construction of the Island Creek Dam at Paducah, Ky., and its proceedings and negotiations for the settlement of that contract after VJ-day came. The War Department admitted that it was obligated to pay the contractor $173,000. There was no dispute at all about that amount. There was a dispute regarding the remaining amount of $75,000. The additional amount of approximately $75,000 was approved by some of the war offices in Washington, but there were differences in other offices which could not be reconciled at that date. Even the payment of the $75,000 had been approved by some of the offices in Washington, but others had not approved it as of VJ-day. The War Department took the position that the War Powers Act was created to apply only during the time when we were actually engaged in war, and no longer; in other words, that these contracts were made in the interest of the war effort, and that the moment the war ceased, if such a contract were continued, it would not then be for that purpose. Consequently, the War Department said it could not pay this claim. This argument seemed specious and fallacious, but nevertheless, they were adamant in their position. The War Department has not paid the $173,000, although every agency of the War Department having anything to do with this contract says the company is entitled to it, and practically all the agencies say that the company is entitled to the additional $75,000. However, the company will not be paid any part of this money until Congress provides the additional legislation that is requested.

I may say that all members of the committee, except the distinguished Senator from North Dakota, approved of the bill, and since that time I have talked to the Senator from North Dakota, and he advises me that he has no objection to the bill.

I have cited this one case out of many cases which were presented to the distinguished chairman and other members of the Judiciary Committee.

Mr. McCARRAN. Mr. President, after this bill was sent to the Senate Committee on the Judiciary, extensive hearings were held by the committee. We went into a great many phases of the question. Many persons came before the committee and recited the circumstances surrounding their particular cases. The General Accounting Office raised some questions as to the language of the then existing bill. After the hearings were concluded, we submitted the matter for reconsideration from the standpoint of redrafting the language of the bill. The language was carefully redrafted so as to limit it in every respect and to protect it in every respect. The language now contained in the bill is what was approved and is approved by the General Accounting Office.

If there ever was a bill in which there was merit and justice and for which there was a need on the ground of fair play and an attempt to render justice to these groups who have tried to serve and have served the Government during the war, this is one bill which in its present form is in that category.

I respectfully suggest that the bill should be considered and passed at this time. I am glad it is to be taken up ahead of the consideration of the measures on the calendar, so that it may be passed by the Senate and may go to the House of Representatives and may receive approval by the House before there is a final adjournment of the Congress.

Mr. LUCAS. Mr. President, I thank the Senator from Nevada for his statement. I agree with him that this is one of the most meritorious bills that I have ever seen presented to the Senate. A great many small contractors throughout the Nation are still suffering because of the technical position which was taken by the War Department thereby denying the payment of these just claims to these unfortunate contractors.

Mr. McCARRAN. Mr. President, let me say that this matter shows the difference between one department which approves and goes forward with adjustments and another department which disapproves and says that after VJ-day it has no right to go forward with adjustments. Those were the two horns of the dilemma. In other words, one group were paid and another group were not paid; and those who suffered had to come to Congress and obtain specific provision for their relief, as set out in this bill.

Mr. LUCAS. Mr. President, perhaps that is another fine example of why the Army and the Navy should be merged. In other words, the Navy is paying the contractors, under the law as it exists at the present time, whereas the War Department takes the position that it cannot pay. If there were a merger of the Army and the Navy, there would be only one lawyer who would advise the Army and the Navy in regard to a question of that kind.

Mr. REVERCOMB. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. REVERCOMB. As one of the members of the subcommittee of the Judiciary Committee which considered this measure, Senate bill 1477, I wish to urge the consideration and passage of the bill. I have never known of a bill which has received more careful attention. As stated by the able chairman of the committee, it was rewritten in the committee.

There is one particular feature of it to which I wish to call attention, because some Members of the Senate spoke to me about this phase of it. The bill as originally written would have permitted the agencies to have made a settlement, and the matter would have ended there. The bill as now written and as now before the Senate permits the agencies to effect the settlement, and then permits an appeal to be made to the district courts, and it permits either the contractor or the United States to appeal from a decision of the district court.

With respect to the Navy's construction, under the present War Powers Act, of the right to make settlement, let me say I hope this bill supersedes in every respect any right derived from the War Powers Act for such settlements, so that in the future any one of these settlements, as to which there is complaint on behalf of the contractors, to begin with, and as to which, after a decision by a district court, there is complaint by either the Government or the contractor, may be reviewed by the court, as in other cases of equity.

Mr. McCARRAN. Mr. President, let me ask the able Senator about the amendment he has discussed, for I know he has responsibility for it. Do I correctly understand that there is to be no appeal by the Government from the decision of the district court, in the event the contractor desires to accept the agreement which is made with respect to the negotiation for damages?

Mr. REVERCOMB. On the contrary, Mr. President, after it gets to the district court and the court makes its decision, either the Government or the contractor may appeal from the decision of the district court.

Mr. McCARRAN. Either one may appeal?

Mr. REVERCOMB. Yes.

The PRESIDING OFFICER. Is there objection to the request for unanimous consent for the present consideration of Senate bill 1477?

Mr. WHERRY. Mr. President, in view of the statement which has been made by the able Senator from Nevada [Mr. McCARRAN], chairman of the Judiciary Committee, and in view of the statement made by the able Senate from Illinois [Mr. LUCAS] and the able Senator from West Virginia [Mr. REVERCOMB], there is no objection on my part.

There being no objection, the Senate proceeded to consider the bill (S. 1477) to authorize relief in certain cases where supplies or services have been furnished for the Government during the war, which had been reported from the Committee on the Judiciary, with an amendment, to strike out all after the enacting clause, and insert:

That where work, supplies, or services have been furnished between December 7, 1941, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, app., sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within 60 days after the date of approval of this act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between December 7, 1941, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, app., sec. 1191), the Contract Settlement Act of 1944 (41 U. S. C., Supp. IV, sec. 101–125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this act. Wherever a department or agency considering a claim under this act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced, claims for such losss shall not be allowed under this act.

(b) Every claimant under this act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within 6 months after the date of approval of this act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this act.

SEC. 4. Appropriations or funds available for work, supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided*, That where no such appropriations are available appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this act, together with the amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within 6 months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

The title was amended so as to read: "A bill to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war."

EXECUTIVE MESSAGES REFERRED

As in executive session,

The PRESIDING OFFICER (Mr. HUFFMAN in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF COMMITTEES

As in executive session,

The following favorable reports of nominations were submitted:

By Mr. WALSH, from the Committee on Naval Affairs:

Albert L. O'Bannon, an officer in the United States Naval Reserve, to be an ensign in the line of the Navy.

By Mr. GEORGE, from the Committee on Finance:

Sundry candidates for appointment in the Regular Corps of the United States Public Health Service.

By Mr. THOMAS of Utah, from the Committee on Military Affairs:

Oliver Harold Folk for appointment as administrative officer, national headquarters, Selective Service System;

John E. Tracey for appointment as assistant Chief, Appointments and Personnel Division, National Headquarters, Selective Service System;

Sundry officers for appointment in the Regular Army of the United States; and

Sundry officers for temporary appointment in the Army of the United States, under the provisions of law.

By Mr. WAGNER, from the Committee on Banking and Currency:

James R. Isleib, of Texas, to be Land Bank Commissioner in the Farm Credit Administration.

RECESS

Mr. HILL. Mr. President, under the order previously entered, I now move that the Senate stand in recess until 12 o'clock noon tomorrow.

There being no objection, the Senate (at 5 o'clock and 46 minutes p. m.), took a recess, the recess being under the order previously entered, until tomorrow, Wednesday, July 17, 1946, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate July 16 (legislative day of July 5), 1946:

UNITED STATES PUBLIC HEALTH SERVICE

The following-named candidates for promotion in the Regular Corps of the United States Public Health Service:

SURGEON TO BE TEMPORARY MEDICAL DIRECTOR

William F. Ossenfort

SURGEONS TO BE TEMPORARY SENIOR SURGEONS

Frederick J. Brady
George L. Fite
Arthur W. Newitt

DENTAL SURGEONS TO BE TEMPORARY SENIOR DENTAL SURGEONS

Ralph S. Lloyd
George E. Jones
William P. Kroschel
Bruce D. Forsyth

IN THE NAVY

The following-named officers of the line of the Navy to be assistant paymasters in the Navy with the rank of ensign:

James E. Brown
William S. Benson 2d
John J. Caporaso
Sherman F. Drake
Karl W. Fischer, Jr.
Arthur E. Linder
Wesley J. McClaren

POSTMASTERS

ALABAMA

Walter R. Warrick, Marbury, Ala. Office became Presidential July 1, 1946.

Luther B. Sprott, Sprott, Ala. Office became Presidential July 1, 1946.

Lucy Vance, Vance, Ala., Office became Presidential July 1, 1946.

Mamie K. Gunlock, Wilton, Ala. Office became Presidential July 1, 1946.

ARKANSAS

William C. Mayfield, Hindsville, Ark. Office became Presidential July 1, 1946.

Foster B. Dowell, Tuckerman, Ark., in place of C. K. Coe, resigned.

CALIFORNIA

Mary P. Henck, Skyforest, Calif. Office became Presidential July 1, 1946.

Rienne A. Stubbs, Twin Peaks, Calif. Office became Presidential July 1, 1946.

COLORADO

Minnie H. McCullough, Ouray, Colo., in place of A. L. Grabow, resigned.

FLORIDA

Cary P. DeBusk, Homosassa, Fla., Office became Presidential July 1, 1946.

Luella Campbell, Loughman, Fla. Office became Presidential July 1, 1946.

Catherine P. Ladd, Melbourne Beach, Fla. Office became Presidential July 1, 1946.

Mary L. Godfrey, Yalaha, Fla. Office became Presidential July 1, 1946.

79TH CONGRESS
2D SESSION

S. 1477

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 1946

Referred to the Committee on the Judiciary

AN ACT

To authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where work, supplies, or services have been furnished between December 7, 1941, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, app., sec. 611), such departments and agencies are hereby authorized, in accordance with

regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between December 7, 1941, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, app., sec. 1191), the Contract Settlement Act of 1944 (41 U. S. C., Supp., IV, sec. 101–125), or similar

legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this Act. Wherever a department or agency considering a claim under this Act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced, claims for such losses shall not be allowed under this Act.

(b) Every claimant under this Act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

SEC. 4. Appropriations or funds available for work,

supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided,* That where no such appropriations are available, appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this Act, together with the amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim, and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either

party may appeal from the decision of the court as in other equity cases.

Passed the Senate July 16 (legislative day, July 5), 1946.

Attest: LESLIE L. BIFFLE,

Secretary.

79TH CONGRESS
2D SESSION

S. 1477

AN ACT

To authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

JULY 17, 1946
Referred to the Committee on the Judiciary

6. TREASURY-POST OFFICE APPROPRIATION BILL. Both Houses agreed to a further conference report on this bill, H. R. 5452 (pp. 9571-2, 9621). This bill will now be sent to the President.

7. WOMEN'S RIGHTS. Rejected S. J. Res. 61, proposing an amendment to the Constitution providing for equal rights for men and women (vote was 38 for, 35 against, but 2/3 was required)(pp. 9527-35).

8. MINERALS. Senate conferees were appointed on S. 1236, to amend the Mineral Leasing Act in order to promote development of oil and gas on the public domain (p. 9549).

9. BANKING AND CURRENCY. Both Houses agreed to the conference report on H. R. 4590, to authorize the use by industry of Government silver (pp. 9550, 9604-5). This bill will now be sent to the President.

10. HAWAII. The Territories and Insular Affairs Committee reported without amendment H. R. 3361, to provide that U. S. use of lands in Hawaii for war purposes which may prevent the performance of any condition of sale, shall not cause forfeiture of the lands (S. Rept. 1762)(p. 9536).

HOUSE - July 19

11. LABOR-FEDERAL SECURITY APPROPRIATION BILL. Agreed to a further conference report on this bill, H. R. 6739, which modifies the NLRB item so as to prevent it from organizing or assisting in organizing of agricultural laborers as that term is defined in the Fair Labor Standards Act (pp. 9621-2).

12. UNESCO. Chairman Bloom of the Foreign Affairs Committee requested House concurrence in the Senate amendments to H. J. Res. 305, to provide for U. S. participation in the United Nations, Educational, Scientific, and Cultural Organization, but withdrew the request temporarily after discussion (p. 9622).

13. CONGRESSIONAL REORGANIZATION. Rep. Monroney, Okla., inserted and discussed the House report on the congressional-reorganization bill, S. 2177 (pp. 9623-35).

14. SUBSIDIES; TAXATION. Rep. Rogers, Mass., recommended reduction of taxes in the amount of discontinued subsidies, saying "the people should not pay twice" (p. 9636).

15. PRICE CONTROL. Rep. Bryson, S. C., spoke in favor of price-control continuation and expressed the hope that a satisfactory compromise will be worked out (pp. 9636-7).

16. CONTRACTS. The Judiciary Committee reported with amendments S. 1477, to authorize relief in certain cases where work, supplies, or services have been furnished for Government under contracts during the war (H. Rept. 2576)(p. 9638).

17. EDUCATION; LANDS. The Public Lands Committee reported with amendment H. R. 7038, to provide for sale of certain public lands in the States for the use and benefit of the State public educational institutions (H. Rept. 2580)(p. 9638).

18. PERSONNEL. Concurred in Senate amendment to H.R. 6432, to permit department and agency heads to designate disbursing officers to make payments of claims directly to Government employees and former employees for the difference between amounts of overtime, leave, and holiday compensation computed at day rates and overtime, leave, and holiday compensation computed at night rates pursuant to Comptroller General decisions (p. 9576) This bill will now be sent to the President.

19. WATER POLLUTION. Rep. Pittenger, Minn., urged immediate action on legislation to control and prevent water pollution (pp. 9576-7).

20. RESEARCH; ATOMIC ENERGY. Continued debate on S. 1717, for the control and development of atomic energy (pp. 9591-621).

21. CREDIT UNIONS. Concurred in Senate amendment to H.R. 6372, to amend the Federal Credit Union Act so as to permit recovery within two years of charges for greater amounts of interest than are allowed under the Act; to provide for issuance of shares in joint tenancy; to authorize payments from union funds of premiums for bonds required; and to limit individual loans to $200 or 10% of the paid-in and unimpaired capital and surplus of the credit union, or not in excess of $300 unless the amount over $300 is adequately secured (p. 9605). This bill will now be sent to the President.

HOUSE - July 20

22. FOREIGN RELATIONS. Passed as reported H.R. 6967, the proposed Foreign Service Act of 1946, to improve, strengthen, and expand the Foreign Service and to consolidate and revise the laws relating to its administration; includes provisions for cooperation with other departments (pp. 9699-717). For provisions of bill see Digest 134).

Conferees were appointed on H.J. Res. 305, to provide for U.S. participation in the United Nations Educational, Scientific, and Cultural Organization (p. 9724).

Passed as reported H.R. 6646, to establish the Office of Under Secretary of State for Economic Affairs (pp. 9721-3).

23. INFORMATION; FOREIGN RELATIONS. Passed with amendments H.R. 4982, to enable the State Department more effectively to carry out its responsibilities in the foreign field by means of (a) public dissemination abroad of information about the U.S., and (b) promotion of the interchange of persons, knowledge, and skills between the U.S. and the peoples of other countries (pp. 9717-21).

24. BUILDINGS AND GROUNDS. Rep. Lanham, Tex., made and withdrew a request to suspend the rules and pass H.R. 6917, to provide site acquisition and design of Federal buildings and to give FWA additional powers over the construction and operation of public buildings (p. 9726). Rep. Lanham had previously asked unanimous consent for the consideration of the bill, but Rep. Buck, N.Y., objected (pp. 9724-6).

25. REORGANIZATION. Rep. Manasco asked unanimous consent for the consideration of H.J.Res. 382, providing for the taking effect of Reorganization Plan No. 1, except for the provision regarding the National Housing Agency; but withdrew his request when Rep. Taber, N.Y., stated that he would have to object (p. 9726).

The Rules Committee reported a resolution for the consideration of S.2177, the LaFollette congressional-reorganization bill (p. 9733).

and then taper off so as to prevent too rapid a deflation is a problem calling for the highest degree of courage and sagacity. The situation in Congress with regard to price control is, to be perfectly frank, discouraging to those of us who believe that effective controls are essential for a limited period in order to avoid the manifold dangers of inflation.

After a great deal of debate and a series of conferences the Senate and the House finally agreed upon an amended and reamended Price Control Act, which I and my other Democratic colleagues voted for reluctantly, because it was quite apparent that we must accept that act or none at all. Our democratic leaders in both Houses advised the President that said amended act was the best that could be had. President Truman vetoed the act choosing to allow OPA to die rather than to approve a measure which he believed would have disastrous effects on our national economy.

I have since been criticized for the way that I voted on the OPA question. I should like to take this opportunity to clarify my position for the voters of this district. First, let me state quite emphatically that I believe in effective price control during th period in which there in any danger of uncontrolled inflation. I am anxious, however, as I know all of you are anxious, to terminate these controls just as soon as it is safe and practical. I do not believe that the time has yet arrived when we can safely dispense with price control over the great majority of our consumer goods. However, there is a very peculiar and difficult situation in Congress. Price control has a great deal of strong opposition. It became apparent early in the debate that an attempt was being made to allow OPA to die before any congressional action could be taken. This would leave the Nation, as it is today, under no controls. The friends of price control then faced this dilemma: They could vote against this measure with its amendments and thus eliminate any possibility of obtaining any type of price-control legislation, or they could vote for the measure in the hope of salvaging some small degree of merit and effectiveness. I was one of many loyal Democrats who chose the latter course. I voted to extend price control, not as I would have liked it to be extended but because I realized that it was this bill or nothing. As it developed, we received nothing, since the Congress failed to override President Truman's veto.

I shall continue to fight for effective price control during this period of our reconversion to a stable economy. Nevertheless, I long for the day when we can safely rely upon the law of supply and demand. Free enterprise made our Nation great, but it cannot long survive under a rigidly controlled economy. Eventually, the shackles must be eliminated, our economy must seek a natural level. The essential problem which confronts the country, therefore, is not how to prevent the rise in prices but how to keep the rise moderate and to keep it orderly and free from speculative excesses.

Successful control of prices during the difficult days ahead requires a combination of policies and the cooperation of government, business, and labor. Government price controls need to be continued, though on a progressively more liberal basis, trade unions need to refrain from pressing demands which increase money wages without increasing real wages, and need to do what they can to increase output per man-hour. No one of these policies is sufficient, but all of them together would prevent a disorderly rise in prices. There is a natural temptation on the part of various groups to put special interests ahead of the common interest of avoiding a speculative rise and collapse of prices. Cooperation, however, is essential. The voters, therefore, should expect legislators, public administrators, manufacturers, retailers, and union leaders to do their part toward averting a repetition of the boom and collapse which followed the last war. Failure to do this will have disastrous consequences for the entire country.

Such is my outlook on the price-control issue. My position has been reached after much deliberation and study. I welcome any constructive criticism which any of my constitucnts have to offer. To the present time, however, I can honestly say that my stand has received the approval of the vast majority of those who have favored me with their comments. I shall continue to reflect in all my actions the manifest will of those whom I represent. This is your Government, your democracy, and I am your representative. I shall continue to speak for you and fight for the ideals which all of us hold dear.

I have been in contact daily with members of the free conference committee now considering price control. Hope is entertained that soon a satisfactory acceptable bill will be worked out. It is my purpose to vote for any reasonable fair control measure which is presented to the Congress.

SENATE BILLS AND JOINT RESOLUTION REFERRED

Bills and a joint resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2083. An act to amend section 6 of the Classification Act of 1923, as amended; to the Committee on Civil Service.

S. 2085. An act to amend title V of the act entitled "An act to expedite the provision of housing in connection with the national defense, and for other purpose," approved October 14, 1940, as amended, to authorize the Federal Works Administrator to provide needed educational facilities, other than housing, to educational institutions furnishing courses of training or education to persons under title II of the Servicemen's Readjustment Act of 1944, as amended; to the Committee on Public Buildings and Grounds.

S. 2125. An act to amend the act entitled "An act to establish a code of law for the District of Columbia," approved March 3, 1901, and the acts amendatory thereof and supplementary thereto; to the Committee on the District of Columbia.

S. 2220. An act to authorize the United States Park Police to make arrests within Federal reservations in the environs of the District of Columbia; to the Committee on the District of Columbia.

S. 2253. An act to further amend the act of January 16, 1936, as amended, entitled "An act to provide for the retirement and retirement annuities of civilian members of the teaching staff at the United States Naval Academy and the Postgraduate School, United States Naval Academy"; to the Committee on Naval Affairs.

S. 2256. An act to amend the Servicemen's Readjustment Act of 1944; to the Committee on World War Veterans' Legislation.

S. 2260. An act for the relief of Roy M. Davidson; to the Committee on Claims.

S. 2265. An act to make criminally liable persons who negligently allow prisoners in their custody to escape; to the Committee on the Judiciary.

S. 2306. An act to authorize the Secretary of War to grant Georgia Power Co. a 100-foot perpetual easement across certain land in the State of Alabama constituting a portion of the military reservation designated as Fort Benning, Ga.; to the Committee on Military Affairs.

S. 2310. An act to further extend the times for commencing and completing the construction of a bridge across the Mississippi River at or near Friar Point, Miss., and Helena, Ark.; to the Committee on Interstate and Foreign Commerce.

S. 2326. An act to incorporate the Amvets, American Veterans of World War II; to the Committee on the Judiciary.

S. 2348. An act to authorize the continuance of the acceptance by the Treasury of deposits of public moneys from the Philippine Islands; to the Committee on Insular Affairs.

S. 2349. An act to permit the Secretary of the Navy to delegate the authority to compromise and settle claims for damages to property under the jurisdiction of the Navy Department, and for other purposes; to the Committee on Naval Affairs.

S. 2359. An act to close the Office of the Recorder of Deeds on Saturdays; to the Committee on the District of Columbia.

S. 2369. An act for the relief of Col. S. V. Constant, General Staff Corps; to the Committee on Claims.

S. 2375. An act to change the name of the Chemical Warfare Service to the Chemical Corps; to the Committee on Military Affairs.

S. J. Res. 153. Joint resolution providing for the comprehensive observance of the bicentennial of John Paul Jones; to the Committee on the Library.

ADJOURNMENT

Mr. McCORMACK. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 31 minutes p. m.), under its previous order, the House adjourned until tomorrow, Saturday, July 20, 1946, at 10 o'clock a. m.

COMMITTEE MEETINGS

COMMITTEE ON WORLD WAR VETERANS' LEGISLATION

(Monday, July 22, 1946)

There will be a meeting of the Committee on World War Veterans' Legislation, on Monday, July 22, 1946, at 10:30 a. m., in executive session, in the committee room, 356 House Office Building.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. JACKSON: Committee on Indian Affairs submits a supplemental report on S.

115, an act to modify sections 4 and 20 of the Permanent Appropriation Repeal Act, 1934, with reference to certain funds collected in connection with the operation of Indian Service irrigation projects, and for other purposes; with amendment (Rept. No. 2489, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. JACKSON: Committee on Indian Affairs submits a supplemental report on S. 1235, an act to authorize the use of the funds of any tribe of Indians for insurance premiums; without amendment (Rept. No. 2490, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. EBERHARTER: Committee on Ways and Means submits a supplemental report on H. R. 7037, a bill to amend the Social Security Act and the Internal Revenue Code, and for other purposes (Rept. No. 2526, pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. WALTER: Committee on the Judiciary. S. 1477. An act to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war; with amendments (Rept. No. 2576). Referred to the Committee of the Whole House on the State of the Union.

Mr. HEALY: Committee on the District of Columbia. H. R. 5756. A bill for the retirement of public-school teachers in the District of Columbia; without amendment (Rept. No. 2579). Referred to the Committee of the Whole House on the State of the Union.

Mr. BARRETT of Wyoming: Committee on the Public Lands. H. R. 7038. A bill to provide for the sale of certain public lands in the States for the use and benefit of the State public educational institutions; with amendment (Rept. No. 2580). Referred to the Committee of the Whole House on the State of the Union.

Mr. MAY: Committee on Military Affairs. S. 225. An act to authorize the carrying of Civil War battle streamers with regimental colors; without amendment (Rept. No. 2581). Referred to the House Calendar.

Mr. BYRNE of New York: Committee on the Judiciary. S. 496. An act to make it a criminal offense for certain escaped convicts to travel from one State to another; without amendment (Rept. No. 2582). Referred to the House Calendar.

Mr. ELLIOTT: Joint Committee on the Disposition of Executive Papers. House Report No. 2587. Report on the disposition of certain papers of sundry executive departments. Ordered to be printed.

[*Omitted from the Record of July 18, 1946*]

Mr. BLOOM: Committee on Foreign Affairs. H. R. 4502. A bill to authorize and request the President to undertake to mobilize at some convenient place in the United States an adequate number of the world's outstanding experts, and coordinate and utilize their services in a supreme endeavor to discover means of curing and preventing cancer; with amendments (Rept. No. 2565). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. CHENOWETH: Committee on Claims. H. R. 4374. A bill for the relief of Rudolph K. Bartels; with amendments (Rept. No. 2566). Referred to the Committee of the Whole House.

Mr. STIGLER: Committee on Claims. H. R. 4924. A bill for the relief of Joseph A. Brown; with amendment (Rept. No. 2567). Referred to the Committee of the Whole House.

Mr. STIGLER: Committee on Claims. H. R. 5031. A bill for the relief of Ernest C. Heine and Harriet W. Heine; without amendment (Rept. No. 2568). Referred to the Committee of the Whole House.

Mr. STIGLER: Committee on Claims. H. R. 5166. A bill for the relief of Raphael Elder; with amendments (Rept. No. 2569). Referred to the Committee of the Whole House.

Mr. STIGLER: Committee on Claims. H. R. 5288. A bill for the relief of Warren M. Miller; without amendment (Rept. No. 2570). Referred to the Committee of the Whole House.

Mr. CHENOWETH: Committee on Claims. H. R. 5463. A bill for the relief of Hiram H. Wilson; with amendments (Rept. No. 2571). Referred to the Committee of the Whole House.

Mr. CHENOWETH: Committee on Claims. H. R. 6255. A bill for the relief of Thomas A. Beddingfield and his wife, Opal May Beddingfield; with amendments (Rept. No. 2572). Referred to the Committee of the Whole House.

Mr. STIGLER: Committee on Claims. H. R. 6381. A bill for the relief of Thomas L. Brett; with amendments (Rept. No. 2573). Referred to the Committee of the Whole House.

Mr. STIGLER: Committee on Claims. H. R. 6399. A bill for the relief of Caeser Henry; with amendments (Rept. No. 2574). Referred to the Committee of the Whole House.

Mr. DURHAM: Committee on Military Affairs. S. 528. An act for the relief of Thaddeus C. Knight; without amendment (Rept. No. 2583). Referred to the Committee of the Whole House.

Mr. MAY: Committee on Military Affairs. S. 1640. An act to provide for the acquisition by the United States of certain real property in the District of Columbia; without amendment (Rept. No. 2584). Referred to the Committee of the Whole House.

Mr. BONNER: Committee on War Claims. H. R. 1144. A bill for the relief of Jesse A. Lott; without amendment (Rept. No. 2585). Referred to the Committee of the Whole House.

Mr. DAUGHTON of Virginia: Committee on War Claims. H. R. 1633. A bill for the relief of Raymond Crosby; without amendment (Rept. No. 2586). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. H. CARL ANDERSEN:

H. R. 7080. A bill to provide for the construction of a highway bridge across the Bois de Sioux River to replace the Blackmer Bridge which was destroyed by fire; to the Committee on Interstate and Foreign Commerce.

By Mr. ROBERTSON of North Dakota:

H. R. 7081. A bill to provide for the construction of a highway bridge across the Bois de Sioux River to replace the Blackmer Bridge which was destroyed by fire; to the Committee on Interstate and Foreign Commerce.

By Mr. TRAYNOR:

H. R. 7082. A bill to provide for the distribution to hospitals, asylums, or other charitable or reformatory institutions, undeliverable ornamental cards of greeting held by the postal service; to the Committee on the Post Office and Post Roads.

By Mr. CAMPBELL:

H. R. 7083. A bill to amend section 7 of the act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes," approved July 1, 1902, as amended; to the Committee on the District of Columbia.

By Mr. MANSFIELD of Texas:

H. Res. 716. Resolution directing that the Board of Engineers for Rivers and Harbors prepare a revised edition of a compilation of all preliminary examination and survey and review reports transmitted to Congress prior to July 31, 1946; to the Committee on Rivers and Harbors.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BEALL:

H. R. 7084. A bill for the relief of Mrs. Della Hogue; to the Committee on Claims.

By Mr. BUCK:

H. R. 7085. A bill for the relief of Evangelos G. Pappadatos; to the Committee on Immigration and Naturalization.

By Mr. EBERHARTER:

H. R. 7086. A bill for the relief of Rudolf K. Weiler, to the Committee on Immigration and Naturalization.

By Mr. JUDD:

H. R. 7087. A bill for the relief of W. A. Chisholm; to the Committee on Claims.

By Mr. KING:

H. R. 7088. A bill for the relief of Ralph Adams; to the Committee on Claims.

By Mr. MARCANTONIO:

H. R. 7089. A bill for the relief of George Pavoloyanis; to the Committee on Immigration and Naturalization.

By Mr. BALDWIN of New York:

H. R. 7090. A bill for the relief of Tsung Tsai Chen; to the Committee on Immigration and Naturalization.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

2110. By Mr. CASE of South Dakota: Petition of Mr. F. G. Wilson, Martin, S. Dak., and 172 other Indian voters and Indian veterans respectfully petitioning both Houses of Congress to press all Indian legislation now pending or hereafter introduced and to concur and support such legislation to early passage during this session of Congress; to the Committee on Indian Affairs.

2111. By Mr. ROWAN: Petition of members of the board of governors of the Metropolitan Housing Council of Chicago regarding rent control; to the Committee on Banking and Currency.

79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2576

WAR CONTRACT HARDSHIP CLAIMS

JULY 19, 1946.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALTER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1477]

The Committee on the Judiciary, to whom was referred the bill (S. 1477) having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 4, strike the date "December 7, 1941", and insert in lieu thereof "September 16, 1940".

Page 2, line 7, strike the date "December 7, 1941", and insert in lieu thereof "September 16, 1940".

Page 2, line 20, strike the date "December 7, 1941", and insert in lieu thereof "September 16, 1940".

STATEMENT

The purpose of this bill is to authorize departments and agencies of the Government, in accordance with regulations to be prescribed by the President within 60 days after the date of approval of this act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts.

This bill would afford financial relief to those contractors who suffered losses in the performance of war contracts in those cases where the claim would have received favorable consideration under the First War Powers Act and Executive Order No. 9001 if action had been taken by the Government prior to the capitulation of the Japanese Government. However, upon the capitulation, the position was taken by certain departments and agencies of the Govern-

ment involved, that no relief should be granted under the authority which then existed, unless the action was required in order to insure continued production necessary to meet post VJ-day requirements. This was on the basis that the First War Powers Act was enacted to aid in the successful prosecution of the war and not as an aid to the contractors. As a result, a number of claims which were in process at the time of the surrender of the Japanese Government, or which had not been presented prior to such time, were denied even though the facts in a particular case would have justified favorable action if such action had been taken prior to surrender.

The committee has concluded that as a matter of sound legislative policy this bill should pass, as its adoption is the only way to afford a means of considering, adjusting and settling equitable claims of the contractors affected.

There is attached hereto and made a part of this report a statement made by Hon. Pat McCarran, chairman of the Senate Committee on the Judiciary, at the time this proposed measure was being considered by the Senate:

Mr. McCarran. Mr. President, after this bill was sent to the Senate Committee on the Judiciary, extensive hearings were held by the committee. We went into a great many phases of the question. Many persons came before the committee and recited the circumstances surrounding their particular cases. The General Accounting Office raised some questions as to the language of the then existing bill. After the hearings were concluded, we submitted the matter for reconsideration from the standpoint of redrafting the language of the bill. The language was carefully redrafted so as to limit it in every respect and to protect it in every respect. The language now contained in the bill is what was approved and is approved by the General Accounting Office.

If there ever was a bill in which there was merit and justice and for which there was a need on the ground of fair play and an attempt to render justice to these groups who have tried to serve and have served the Government during the war, this is one bill which in its present form is in that category.

I respectfully suggest that the bill should be considered and passed at this time. I am glad it is to be taken up ahead of the consideration of the measures on the calendar, so that it may be passed by the Senate and may go to the House of Representatives and may receive approval by the House before there is a final adjournment of the Congress.

Mr. President, let me say that this matter shows the difference between one department which approves and goes forward with adjustments and another department which disapproves and says that after VJ-day it has no right to go forward with adjustments. Those were the two horns of the dilemma. In other words, one group were paid and another group were not paid; and those who suffered had to come to Congress and obtain specific provision for their relief, as set out in this bill.

○

Union Calendar No. 799

79TH CONGRESS
2D SESSION

S. 1477

[Report No. 2576]

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 1946

Referred to the Committee on the Judiciary

JULY 19, 1946

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

AN ACT

To authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where work, supplies, or services have been furnished between ~~December 7, 1941~~ *September 16, 1940*, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, app., sec. 611),

such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between ~~December 7, 1941~~ *September 16, 1940*, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between ~~December 7, 1941~~ *September 16, 1940*, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, app., sec. 1191), the Contract

Settlement Act of 1944 (41 U. S. C., Supp. IV, sec. 101–125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this Act. Wherever a department or agency considering a claim under this Act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced, claims for such losses shall not be allowed under this Act.

(b) Every claimant under this Act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

SEC. 4. Appropriations or funds available for work, supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided*, That where no such appropriations are available, appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this Act, together with the amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim, and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and

thereafter either party may appeal from the decision of the court as in other equity cases.

Passed the Senate July 16 (legislative day, July 5), 1946.

Attest: LESLIE L. BIFFLE,

Secretary.

Union Calendar No. 799

79TH CONGRESS
2D SESSION

S. 1477

[Report No. 2576]

AN ACT

To authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

JULY 17, 1946

Referred to the Committee on the Judiciary

JULY 19, 1946

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

8. PRICE CONTROL. Received the President's message announcing approval of the price-control measure, stating that if the present law does not work he will recall Congress (pp. 10162-3).

Received from the President supplemental appropriation estimates of $250,000 for the Price Control Board (H.Doc. 720), and $26,000,000 for the Office of Price Administration (H.Doc. 721). To Appropriations Committee. (p. 10167).

9. VETERANS' TERMINAL LEAVE. Received from the President a supplemental appropriation estimate of $2,679,493,000 for the cost of terminal and accumulated leave for enlisted members of the armed forced (H.Doc. 717). To Appropriations Committee. (p. 10167).

10. LANDS; EDUCATION. Passed with amendments H.R. 7038, to provide for the sale of certain public lands in the States for the use and benefit of the State public educational institutions (pp. 10072-3).

11. RESEARCH LANDS. Passed with amendments H.R. 6896, to grant to Miles City, Mont., certain land in Custer County (part of the USDA Livestock Range Experiment Station), for industrial and recreational purposes and as a museum site (pp. 10076-7).

12. ECONOMY. Rep. Taber, N.Y., urged reduction of Federal expenditures and the balancing of the budget (pp. 10067-8).

13. EXPORT CONTROL. Received from the President (July 23) a supplemental appropriation estimate for Commerce Department of $600,000 for the export control of commodities in short supply (H.Doc. 712).

14. APPROPRIATIONS. Received from the President a supplemental appropriation estimate of $20,000,000 for the payment of claims by Government employees for increased overtime, leave, and holiday compensation in accordance with the provisions of H.R. 6232 (H.Doc. 716). To Appropriations Committee. (p. 10167).

15. ECONOMIC ADVISERS. Received from the President a supplemental appropriation estimate of $375,000 for the Council of Economic Advisers (H.Doc. 723). To Appropriations Committee. (p. 10167).

16. CLAIMS. Received from the President several supplemental appropriation estimates for the payment of claims (H.Docs. 724, 725, 726, 727, and 728). To Appropriations Committee. (p. 10167).

17. EXECUTIVE AGENCY INVESTIGATION. The Select Committee to Investigate Executive Agencies submitted a report on a resolution to continue the committee (H.Rept. 2659) (p. 10168).

18. FISHERIES. Received from the Federal Trade Commission a report entitled, "Distribution Method and Cost, Part IX— Cost of Production and Distribution of Fish on the Pacific Coast"(H.Doc. 718) (p. 10167).

SENATE

19. SOCIAL SECURITY. Sen. Pepper, Fla., submitted an amendment which he intends to propose to H.R. 7037, to amend the Social Security Act, and an explanatory statement of the amendment (pp. 10169-70).

20. HEALTH. Reported without amendment the protocol to prolong the International

Sanitary Convention (pp. 10206-8).

21. POSTAL SERVICE. The Post Offices and Post Roads Committee reported without amendment H.R. 5560, to fix the rate of postage on domestic air mail (S.Rept. 1634) (p. 10169).

22. CONTRACTS. Concurred in House amendments to S. 1477, to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war (p. 10210). This bill will now be sent to the President. (10171-2)

23. PERSONNEL; RETIREMENT. Continued debate on H.R. 1362, to amend the Railroad Retirement Act (pp. 10210-19, 10220-45).

Sen. Barkley, Ky., read into the Record his concurrent resolution to amend this act which includes a provision excluding employees engaged in manufacturing, harvesting, storing, etc., of refrigeration or ice for refrigeration purposes in connection with transportation; employees of warehouses not owned by carriers; or employees engaged in transportation by motor vehicle (companies not owned by railroads) (p. 10244).

BILLS INTRODUCED

24. APPROPRIATIONS. H.R. 7140, by Rep. Bender, Ohio, to provide for the reduction of appropriations to the extent necessary to balance the Budget for the fiscal year 1947. To Expenditures in the Executive Departments Committee. (p.10168.)

25. LABOR. H.R. 7141, by Rep. Norton, N.J., to promote the general welfare of the people of the U.S. by establishing a publicly supported labor extension program for wage and salary earners. To Labor Committee. (p. 10168.)

26. PUBLIC LANDS. H.R. 7150, by Rep. Hinshaw, Calif., to repeal the act granting certain public lands situated in Mono County, Calif., to the city of Los Angeles. To Public Lands Committee. (p. 10168.)

27. PRICE CONTROL. H.J.Res. 389, by Rep. Randolph, W.Va., to authorize the Bureau of Labor Statistics to collect price and rent information in additional citi and at more frequent intervals. To Labor Committee. (p. 10168.) Remarks of author (pp. 10160-1).

28. DAIRY PRODUCTS. S. 2479, by Sen. Bilbo, Miss., to amend the act entitled "An act to regulate within the District of Columbia the sale of milk, cream, and ice cream." To District of Columbia Committee. (p. 10169.)

29. WAR POWERS; RATIONING. H.R. 7103 (see Digest 144) amends the Second War Powers Act so as to limit to essential end uses the powers of the Secretary of Agriculture to ration or allocate fats, oils, grains, and other materials in short supply.

ITEMS IN APPENDIX

30. RURAL ELECTRIFICATION. Speech in the House by Rep. Rankin, Miss., discussing the rural electrification programs and what they mean to the farmer and inserting statistics on purchase and consumption of electric power (pp. A4650-8).

Rep. Rowan, Ill., inserted a Chicago Tribune editorial on the diversion of water from Lake Michigan for power production increases (pp. A4667-8).

section 7, may be exercised by such person or persons as he may designate."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ACTING ASSISTANT SURGEONS IN THE NAVY

The Clerk called the bill (H. R. 6992) to amend the act of May 4, 1898 (30 Stat. 369), as amended, to authorize the President to appoint 250 acting assistant surgeons for temporary service.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. SPRINGER. Mr. Speaker, I ask unanimous consent that this bill be passed over without prejudice.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

AMENDING THE ACT TO PROVIDE FOR RETIREMENT AND RETIREMENT ANNUITIES OF CIVILIAN MEMBERS OF TEACHING STAFF AT UNITED STATES NAVAL ACADEMY

The Clerk called the bill (H. R. 6993) to further amend the act of Jannary 16, 1936, as amended, entitled "An act to provide for the retirement and retirement annuities of civilian members of the teaching staff at the United States Naval Academy and the Postgraduate School, United States Naval Academy."

The SPEAKER. Is there objection to the present consideration of the bill?

There was no objection.

Mr. MADDEN. Mr. Speaker, I ask unanimous consent to substitute the bill S. 2253.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The Clerk read as follows:

Be it enacted, etc., That the act of January 16, 1936 (49 Stat. 1092; 34 U. S. C. 1073–1073e), entitled "An act to provide for the retirement and retirement annuities of civilian members of the teaching staff at the United States Naval Academy and the Postgraduate School, United States Naval Academy," as amended by the act of November 28, 1943 (57 Stat. 594), is hereby further amended by inserting therein two new sections Nos. 4B and 4C, reading as follows:

"SEC. 4B. Any civilian member of the teaching staffs to whom this act applies who shall have served for a total period of not less than 5 years, and who, before becoming eligible for retirement under the conditions defined in the preceding sections hereof, becomes totally disabled for useful and efficient service in his position, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the civilian member of the teaching staffs, shall upon his own application or upon the request or order of the Secretary of the Navy be retired on an annuity computed in accordance with provisions of section 4A of this act. The annuity which the Government pays to a civilian teacher who is forced to retire under this section shall be the difference between his total annuity as computed under section 4A of this act and the immediate life annuity to which he is entitled at the time of such retirement under the annuity policy provided by the act. Every annuitant retired under the provisions of this section, unless the disability for which he was retired be permanent in character, shall at the expiration of 1 year from the date of such retirement and annually thereafter, until reaching retirement age as defined in section 3 hereof, be examined by a board of medical officers appointed by the Superintendent of the Naval Academy. If the annuitant is found to be sufficiently recovered for useful and efficient service in his position and if he is offered reemployment by the Superintendent of the Naval Academy, the annuity being paid him by the Government shall cease immediately. If an annuitant who has been retired under the provisions of this section is subsequently reemployed by the Government, the annuity being paid to him by the Government shall be terminated. If the annuitant is reemployed as a civilian teacher at the Naval Academy, the annuity which the Government will pay him at the time of subsequent retirement shall be the difference between the total annuity, computed under section 4A of this act, and the immediate life annuity which the total premiums, paid on his annuity contracts provided by this act, would purchase. No person shall be entitled to receive an annuity under the provisions of this act, and compensation under the provisions of the act of September 7, 1916, entitled 'An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes,' covering the same period of time; but this provision shall not bar the right of any claimant to the greater benefit conferred by either act for any part of the same period.

"SEC. 4C. Any civilian member of the teaching staffs retiring under the provisions of this act, as amended, may at the time of his retirement elect to receive in lieu of the life annuity to be paid by the Secretary of the Navy under the provisions of this act a reduced annuity payable to him during his life, and an annuity after his death payable to his beneficiary, duly designated in writing and filed with the Secretary of the Navy at the time of retirement, during the life of such beneficiary (a) equal to or (b) 50 percent of such reduced annuity and upon the death of such surviving beneficiary all payments shall cease and no further annuities shall be due or payable. The amounts of these two annuities shall be such that their combined actuarial value on the date of retirement as determined under the provisions of the Civil Service Retirement Act shall be the same as the actuarial value of the single life annuity provided by this act."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H. R. 6993) was laid on the table.

SETTLEMENT OF CLAIMS FOR DAMAGE TO PROPERTY UNDER THE JURISDICTION OF THE NAVY DEPARTMENT

The Clerk called the bill (H. R. 6994) to permit the Secretary of the Navy to delegate the authority to compromise and settle claims for damages to property under the jurisdiction of the Navy Department, and for other purposes.

The SPEAKER. Is there objection to the present consideration of the bill?

There was no objection.

Mr. MADDEN. Mr. Speaker, I ask unanimous consent to substitute a similar bill, S. 2349.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The Clerk read as follows:

Be it enacted, etc., That the act of December 5, 1945 (Public Law 246, 79th Cong.) is hereby amended by adding another section thereto as follows:

"SEC. 4. Where the net amount received in settlement does not exceed $1,000, the authority of the Secretary of the Navy as set forth in section 1 may be exercised by such person or persons as he may designate."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H. R. 6994) was laid on the table.

AMENDING SECTION 304 OF THE NAVAL RESERVE ACT OF 1938

The Clerk called the bill (H. R. 7039) to further amend section 304 of the Naval Reserve Act of 1938, as amended, so as to grant certain benefits to naval personnel engaged in training duty prior to official termination of World War II.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That section 304 of the Naval Reserve Act of 1938, as amended, is hereby further amended as follows:

Insert the following new proviso immediately before the final proviso of the said section: "*Provided further*, That any member of the Naval Reserve performing active duty with or without pay for periods of 30 days or less, training duty with or without pay, drills, equivalent instruction or duty, appropriate duty, or prescribed duty, or while performing authorized travel to or from such duties, prior to the official termination of World War II, shall be entitled to all the benefits provided by this section to members of the Naval Reserve in time of peace."

SEC. 2. This amendment shall be effective as of December 1, 1945.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

ATOMIC ENERGY CONFEREES

Mr. THOMASON. Mr. Speaker, the gentleman from Louisiana [Mr. BROOKS] has been called out of the city. He is one of the conferees on the bill S. 1717, the atomic energy bill. Due to his enforced absence, I ask unanimous consent that he be excused from serving as a conferee and that the Speaker appoint some other Member in his place.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER. The Chair appoints the gentleman from North Carolina [Mr. DURHAM] as a conferee, and the Senate will be notified of this action.

CONSENT CALENDAR

WAR CONTRACT HARDSHIP CLAIMS

The Clerk called the bill (S. 1477) to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That where work, supplies, or services have been furnished between December 7, 1941, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, app., sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within 60 days after the date of approval of this act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materiialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losscs (not including diminution of anticipated profits) incurred between December 7, 1941, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

SEC. 2. (a) In arriving at a fair and equitable settlement of claims under this act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between December 7, 1941, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, app., sec. 1191), the Contract Settlement Act of 1944 (41 U. S. C., Supp. IV, sec. 101–125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this act. Wherever a department or agency considering a claim under this act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced, claims for such losses shall not be allowed under this act.

(b) Every claimant under this act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within 6 months after the date of approval of this act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this act.

SEC. 4. Appropriations or funds available for work, supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided*, That where no such appropriations are available, appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this act, together with the amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within 6 months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim, and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

With the following committee amendment:

Page 1, line 4, strike out "December 7, 1941" and insert "September 16, 1940."

The committee amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMENDING THE FUGITIVE FELON ACT

The Clerk called the bill (S. 496) to make it a criminal offense for certain escaped convicts to travel from one State to another.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the act entitled "An act making it unlawful for any person to flee from one State to another for the purpose of avoiding prosecution or the giving of testimony in certain cases", approved May 18, 1934 (48 Stat. 782; 18 U. S. C. 408e), be, and it hereby is, amended to read as follows:

"That it shall be unlawful for any person to move or travel in interstate or foreign commerce from any State, Territory, or possession of the United States, or the District of Columbia, with intent either (1) to avoid prosecution, or custody or confinement after conviction for murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, or extortion accompanied by threats of violence, or attempt to commit any of the foregoing, under the laws of the place from which he flees; or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of a felony is charged. Any person who violates the provision of this act shall, upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not longer than five years, or by both such fine and imprisonment. Violations of this Act may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed or in which the person was held in custody or confinement."

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

SALE OF PUBLIC LANDS FOR USE AND BENEFIT OF STATE PUBLIC EDUCATIONAL INSTITUTIONS

The Clerk called the bill (H. R. 7038) to provide for the sale of certain public lands in the States for the use and benefit of the State public educational institutions.

There being no objection, the Clerk read the bill, as follows:

Be it enacted, etc., That the Secretary of the Interior, through the Bureau of Land Management, shall, as soon as possible, advertise for sale all of the lands presently leased under section 15 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1275), as amended (49 Stat. 1978; 43 U. S. C., sec. 315m), which the Secretary finds are in isolated or disconnected tracts or parcels of 2,560 acres or less, and are unsuitable or undesirable for settlement under the homestead law or for any present or future Federal use or project. In the event that a tract or parcel subject to sale under this act is not sold pursuant to such offer, it shall be reoffered for sale at any subsequent time upon the application of any person. The word "person" as used in this act includes corporations, partnerships, and associations.

SEC. 2. Such land shall be sold to the highest bidder, but at not less than its appraised value, as determined by the Secretary of the Interior, after at least 30 days' notice of the sale published in a newspaper of general circulation in the county or counties in which such land is located. For a period of not less than 30 days after the time for presenting bids has expired, however, a preference right to purchase the offered land at the highest price bid or at twice the appraised value, whichever is lower, shall be given: First, to the person who is then the grazing lessee of the offered tract or tracts and who is also the owner of lands contiguous to or near said tract or tracts; and second, to the owners of contiguous land who do not qualify for a first preference. Where two or more persons apply to exercise the highest preference right claimed in a sale the Secretary of the Interior is authorized to make an equitable division of the land among such applicants. In addition to the sales price the purchaser shall pay to the United States the cost of advertising for sale the tract or tracts purchased by him.

SEC. 3. In any case where the Secretary of the Interior shall determine that the land to be offered for sale under this act in and by itself forms an economic unit, it shall be first offered for sale only to persons who have served in the military or naval forces of the United States for a period of at least 90 days during World War II and who have been honorably discharged. The land shall be sold to the highest bidder among such persons, but at not less than its appraised value as determined by the Secretary of the Interior. In addition to the sales price, the purchaser shall pay to the United States the cost of advertising for sale the tract or tracts purchased by him. The preferences stated in section 2 of this act shall not apply to sales under this section. If land offered for sale under this section is not sold, it shall thereafter be subject to sale under sections 1 and 2 of this act.

SEC. 4. Sales under this act may be made upon such terms of deferred payment as the Secretary of the Interior may prescribe, and upon completion of payment the Secretary shall cause a patent to issue for the land sold.

SEC. 5. Any sale under this act shall be made subject to leases, easements, or other rights existing in or to the land at the date the land is offered for sale, but any rentals or other charges except those relating to the mineral rights retained by the United States, accruing after the patent has been issued, shall be paid to the purchaser or to his successors in interest. No sale shall defeat any valid right which has already attached to the land under any pending entry or location.

SEC. 6. Patents for any land purchased under this act shall contain a reservation to the United States of oil, gas, coal, and all

the last paragraph on the re-establishment of the Eastern Bureau or analogous agencies as regional bureau for Asia or the Pacific zone."

(2) As regards the International Sanitary Convention for Aerial Navigation, 1944:

"(a) Pursuant to Article No. 21, the Government declares that the Convention does not apply to the Territories of Papua and Norfolk Islands or the Mandated Territories of New Guinea and Nauru.

"(b) The Australian Government reserves the right in respect of certificates of inoculation against cholera, typhus, yellow fever, and certificates of vaccination against smallpox, to accept only those certificates which are signed by a recognized official of the Public Health Services of the country concerned, and which carry within the text of the certificate an intimation of the office occupied by the person signing the certificate.

"(c) The Australian Government, for temporary reasons of a practical nature, is not in a position to accept the full obligations arising out of Section 1, Part 1 of the 1933 Convention in relation to aerodromes within its territory which are within operational areas or under the control of the Air Forces of the Commonwealth or any Allied power.

"(d) Notwithstanding Article No. 35 or other provisions of the 1933 or the present Convention, the Australian Government reserves the right to require that every member of the crew and every passenger on every aircraft arriving from overseas shall, on arrival at the first landing place in Australia, produce to the quarantine officer there a certificate of recent vaccination against smallpox as defined in the Convention, or a certificate that he has given proof that he is adequately immune to smallpox, failing both of which certificates he shall submit to be vaccinated against smallpox.

"(e) The Australian Government reserves the right to prohibit the importation into Australia on any aircraft of any animal other than approved insects and parasites."

The PRESIDING OFFICER. The protocol is before the Senate as in Committee of the Whole, and open to amendment. If there be no amendment to be proposed, the protocol will be reported to the Senate.

The protocol was reported to the Senate without amendment.

The PRESIDING OFFICER. The resolution of ratification will be read.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Executive E, Seventy-ninth Congress, second session, a protocol to prolong the International Sanitary Convention for Aerial Navigation, 1944, modifying the International Sanitary Convention for Aerial Navigation of April 12, 1933, which was signed on behalf of the United States of America on April 30, 1946, with the reservation, "subject to ratification."

The PRESIDING OFFICER. The question is on agreeing to the resolution of ratification. [Putting the question.] Two-thirds of the Senators present concurring therein, the resolution of ratification is agreed to, and the protocol is ratified.

Mr. BARKLEY. Mr. President, does that conclude the treaties?

The PRESIDING OFFICER. That concludes the treaties.

Mr. BARKLEY. I ask that the Executive Calendar be called.

AMERICAN REPRESENTATIVES TO UNITED NATIONS

The legislative clerk read the nomination of WARREN R. AUSTIN, United States Senator from the State of Vermont, to be a representative of the United States of America to the second part of the first session of the General Assembly of the United Nations.

Mr. BARKLEY. Mr. President, I again express my deep regret at the departure of our friend from the Senate, and congratulate the President, the country, and the Senator himself upon his selection for this high station. I wish him all the success which his character, ability, and earnestness in the cause merit.

The PRESIDING OFFICER. Without objection, the nomination of the distinguished Senator from Vermont is confirmed.

The legislative clerk read the nomination of TOM CONNALLY, United States Senator from the State of Texas, to be a representative of the United States of America to the second part of the first session of the General Assembly of the United Nations.

The PRESIDING OFFICER. Without objection, the nomination of the distinguished Senator from Texas is confirmed.

The legislative clerk read the nomination of ARTHUR H. VANDENBERG, United States Senator from the State of Michigan, to be a representative of the United States of America to the second part of the first session of the General Assembly of the United Nations.

The PRESIDING OFFICER. Without objection, the nomination of the distinguished Senator from Michigan is confirmed.

The legislative clerk read the nomination of Mrs. Anna Eleanor Roosevelt to be a representative of the United States of America to the second part of the first session of the General Assembly of the United Nations.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of SOL BLOOM, a Member of the United States House of Representatives from the State of New York, to be a representative of the United States of America to the second part of the first session of the General Assembly of the United Nations.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of CHARLES A. EATON, a Member of the United States House of Representatives from the State of New Jersey, to be an alternate representative of the United States of America to the second part of the first session of the General Assembly of the United Nations.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of HELEN GAHAGAN DOUGLAS, a Member of the United States House of Representatives from the State of California, to be an alternate representative of the United States of America to the second part of the first session of the General Assembly of the United Nations.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of John Foster Dulles to be an alternate representative of the United States of America to the second part of the first session of the General Assembly of the United Nations.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

The legislative clerk read the nomination of Adlai E. Stevenson to be an alternate representative of the United States of America to the second part of the first session of the General Assembly of the United States.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

FOREIGN SERVICE

The legislative clerk proceeded to read sundry nominations in the Foreign Service.

Mr. BARKLEY. I ask that the nominations in the Foreign Service be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations in the Foreign Service are confirmed en bloc.

UNITED STATES CIRCUIT COURT OF APPEALS

The legislative clerk read the nomination of Harry E. Kalodner to be judge of the Third Circuit, United States Circuit Court of Appeals.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

UNITED STATES DISTRICT JUDGE

The legislative clerk read the nomination of Theodore Levin to be United States district judge for the eastern district of Michigan.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

UNITED STATES ATTORNEY

The legislative clerk read the nomination of Dan B. Shields to be United States attorney for the district of Utah.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

UNITED STATES MARSHAL

The legislative clerk read the nomination of Donald A. Draughon to be United States marshal for the district of Puerto Rico.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

DEPARTMENT OF THE INTERIOR

The legislative clerk read the nomination of Mastin G. White to be Solicitor of the Department of the Interior.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

That completes the calendar.

Mr. BARKLEY. I ask that the President be immediately notified of all nominations confirmed this day.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith.

LEGISLATIVE SESSION

Mr. BARKLEY. I move that the Senate resume the consideration of legislative business.

The motion was agreed to; and the Senate resumed the consideration of legislative business.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerk, announced that the House had passed the bill (S. 1477) to authorize

relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war, with amendments, in which it requested the concurrence of the Senate.

ENROLLED JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled joint resolution (H. J. Res. 371) extending the effective period of the Emergency Price Control Act of 1942, as amended, and the Stabilization Act of 1942, as amended, and it was signed by the President pro tempore.

MODIFICATION OF RAILROAD FINANCIAL STRUCTURES—PRINTING OF BILL SHOWING HOUSE AMENDMENTS

Mr. WHEELER. Mr. President, I ask unanimous consent that the bill (S. 1253) to enable debtor railroad corporations expeditiously to effectuate reorganization of their financial structures; to alter or modify their financial obligations; and for other purposes, be printed showing the House amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRINTING OF HANDBOOK ENTITLED "LAWS RELATING TO THE PHYSICALLY HANDICAPPED"

The PRESIDING OFFICER laid before the Senate House Concurrent Resolution 160, which was read as follows:

Resolved by the House of Representatives (the Senate concurring), That the handbook entitled "Laws Relating to the Physically Handicapped" be printed as a House document, and that 12,000 additional copies shall be printed for the use of the Committee on Labor of the House of Representatives.

Mr. HAYDEN. Mr. President, I ask unanimous consent for the present consideration of the concurrent resolution.

There being no objection, the concurrent resolution was considered and agreed to.

WAR CONTRACT HARDSHIP CLAIMS

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1477) to authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war, which were, on page 1, line 4, to strike out "December 7, 1941" and insert "September 16, 1940"; on page 2, line 7, to strike out "December 7, 1941" and insert "September 16, 1940"; and on page 2, line 20, to strike out "December 7, 1941" and insert "September 16, 1940."

Mr. McCARRAN. Mr. President, I move that the Senate concur in the House amendments. Let me say by way of very brief explanation that the bill passed the House as it passed the Senate, except that the House changed the date from December 7, 1941, to September 16, 1940, which was the date on which the Selective Service Act was passed. It merely extends the period retroactively during which the law may be effective.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to.

AMENDMENT TO RAILROAD RETIREMENT ACTS, ETC.

The Senate resumed consideration of the bill (H. R. 1362) to amend the railroad retirement acts, the Railroad Unemployment Insurance Act, and subchapter B of chapter 9 of the Internal Revenue Code; and for other purposes.

Mr. BARKLEY. Mr. President, I am not in charge of the bill which is the unfinished business of the Senate. The Senator from Colorado [Mr. JOHNSON], who was chairman of the subcommittee of the Committee on Interstate Commerce which dealt with this proposed legislation, will be in charge of it and will make a detailed explanation of it. However, I wish to make a very brief statement with reference to it, so that the Senate may understand the situation in which we find ourselves with reference to this bill.

It has been suggested that probably there should be as full an attendance as possible while this bill is under consideration. I therefore suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Hart	O'Daniel
Andrews	Hawkes	O'Mahoney
Austin	Hayden	Overton
Ball	Hill	Pepper
Barkley	Hoey	Radcliffe
Bilbo	Huffman	Reed
Brewster	Johnson, Colo.	Revercomb
Brooks	Johnston, S. C.	Russell
Buck	Kilgore	Shipstead
Burch	Knowland	Smith
Bushfield	La Follette	Stanfill
Byrd	Langer	Stewart
Capehart	Lucas	Swift
Capper	McCarran	Taft
Carville	McClellan	Taylor
Connally	McFarland	Thomas, Okla.
Cordon	McKellar	Thomas, Utah
Donnell	McMahon	Tobey
Downey	Magnuson	Vandenberg
Eastland	Maybank	Wagner
Ferguson	Mead	Walsh
Fulbright	Millikin	Wheeler
George	Mitchell	Wherry
Gerry	Moore	White
Green	Morse	Wiley
Guffey	Murdock	Willis
Gurney	Murray	Young

The PRESIDING OFFICER. Eighty-one Senators having answered to their names, a quorum is present.

Mr. BARKLEY. Mr. President, I wish to make a very brief general preliminary statement with reference to this proposed legislation. The Senator from Colorado, as I indicated a moment ago, who was the chairman of the subcommittee of the Committee on Interstate Commerce handling this bill, will give a more detailed explanation of it.

I wish to state that for many years it has been recognized that amendments to the Railroad Retirement Act have been necessary. In the first place, for a long time it has been recognized that the fund itself, out of which retirements are paid, has been on an unsound basis, and that the contributions both by the carriers and by the employees would have to be increased in order that the fund might be placed on a sound basis. I do not think there is any serious disagreement as to the need of strengthening the fund and putting it upon a sound basis.

The pending bill provides that the contributions shall be increased on a gradual basis, reaching their ultimate peak in 1952. The present rate of contribution is 3½ percent of the pay roll, and that is contributed by each side. The pending bill provides for an increase of that rate until in 1952 it will reach a maximum of 6¼ percent. But the process is a gradual one, increasing a fraction of a percent each year, until 1952, and that increase is applicable to the retirement payments, not to unemployment insurance. The bill will not add to the fund insofar as unemployment insurance is concerned, as I understand it.

Mr. President, for 5 or 6 years the railroad brotherhoods, who are primarily interested in this legislation, have been urging that amendments increasing the contributions and making other changes in the law be enacted. Of course, as in all such cases, a large amount of information and organization and presentation of the matter before congressional committees and, prior to that, before the organizations themselves, were required in order that a program might be worked out.

On May 11, 1944, the Senator from Montana [Mr. WHEELER], chairman of the Committee on Interstate Commerce, and the Senator from New York [Mr. WAGNER] introduced in the Senate the amendments which had been discussed and had been agreed upon, the bill at that time being identified as Senate bill 1911.

A similar bill was introduced in the House of Representatives by Representative CROSSER, of Ohio, on May 15, 1944. It carried the number House bill 4805. Hearings in connection with House bill 4805 got under way before the House Committee on Interstate and Foreign Commerce on May 23, 1944, and extended intermittently through June 1, on which date the Railway Labor Executives' Association committee concluded presentation of testimony in support of the bill then pending in the House of Representatives, House bill 4805.

The opposition to the measure succeeded in preventing resumption of the hearings up until the time the Congress recessed, on June 23. Congress reconvened on the 1st day of August 1944, and efforts were made by the Railway Labor Executives' Association, through its executive committee, to have the hearings before the House committee resumed. But on the 30th of August 1944, the House committee voted not to resume the hearings at that time. Congress adjourned without hearing the opponents of the bill.

When the Seventy-ninth Congress convened in January 1945, Representative CROSSER, of Ohio, on the 11th of January 1945, introduced House bill 1362, which is the bill now pending before the Senate. The Senator from Montana [Mr. WHEELER] and the Senator from New York [Mr. WAGNER] introduced Senate bill 293, on January 15, 1945. Hearings before the House committee got under

[Public Law 657—79th Congress]

[Chapter 864—2d Session]

[S. 1477]

AN ACT

To authorize relief in certain cases where work, supplies, or services have been furnished for the Government under contracts during the war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941 (50 U. S. C., Supp. IV, app., sec. 611), such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President within sixty days after the date of approval of this Act, to consider, adjust, and settle equitable claims of contractors, including subcontractors and materialmen performing work or furnishing supplies or services to the contractor or another subcontractor, for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts or subcontracts. Settlement of such claims shall be made or approved in each case by the head of the department or agency concerned or by a central authority therein designated by such head.

Sec. 2. (a) In arriving at a fair and equitable settlement of claims under this Act, the respective departments and agencies shall not allow any amount in excess of the amount of the net loss (less the amount of any relief granted subsequent to the establishment of such loss) on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945, and shall consider with respect to such contracts and subcontracts (1) action taken under the Renegotiation Act (50 U. S. C., Supp. IV, app., sec. 1191), the Contract Settlement Act of 1944 (41 U. S. C., Supp. IV, sec 101–125), or similar legislation; (2) relief granted under section 201 of the First War Powers Act, 1941, or otherwise; and (3) relief proposed to be granted by any other department or agency under this Act. Wherever a department or agency considering a claim under this Act finds that losses under any such contract or subcontract affected the computation of the amount of excessive profits determined in a renegotiation agreement or order, and to the extent that the department or agency finds such amount was thereby reduced, claims for such losses shall not be allowed under this Act.

(b) Every claimant under this Act shall furnish to the department or agency concerned any evidence within the possession of such claimant bearing upon the matters referred to in subsection (a) of this section.

SEC. 3. Claims for losses shall not be considered unless filed with the department or agency concerned within six months after the date of approval of this Act, and shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945, but a previous settlement under the First War Powers Act, 1941, or the Contract Settlement Act of 1944 shall not operate to preclude further relief otherwise allowable under this Act.

SEC. 4. Appropriations or funds available for work, supplies, or services of the character involved in the respective claims at the time of settlement thereof shall be available for payment of the settlements: *Provided*, That where no such appropriations are available, appropriations for payment of such settlements are hereby authorized.

SEC. 5. Each department and agency shall report to the Congress quarterly the name of each claimant to whom relief has been granted under this Act, together with the amount of such relief and a brief statement of the facts and the administrative decision.

SEC. 6. Whenever any claimant under this Act is dissatisfied with the action of a department or agency of the Government in either granting or denying his claim, such claimant shall have the right within six months to file a petition with any Federal district court of competent jurisdiction, asking a determination by the court of the equities involved in such claim; and upon the filing of such a petition, the court, sitting as a court of equity, shall have jurisdiction to determine the amount, if any, to which such claimant and petitioner may be equitably entitled (not exceeding the amount which might have been allowed by the department or agency concerned under the terms of this Act) and to enter an order directing such department or agency to settle the claim in accordance with the finding of the court; and thereafter either party may appeal from the decision of the court as in other equity cases.

Approved August 7, 1946.